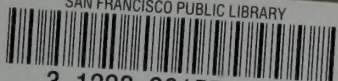


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HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, APRIL 27, 1988

2:15 P.M.

Reported by:

Evelyn Mizak
Shorthand Reporter

1 APPEARANCES

2 MEMBERS PRESENT

3 SENATOR DAVID ROBERTI, Chairman

4 SENATOR WILLIAM CRAVEN, Vice Chairman

5 SENATOR JIM ELLIS

6 SENATOR NICHOLAS PETRIS

7 MEMBERS ABSENT

8 SENATOR HENRY MELLO

9 STAFF PRESENT

10 PAT WEBB, Committee Secretary

11 RICK ROLLENS, Consultant on Bill Referrals

12 NANCY MICHEL, Consultant on Appointments

13 ALSO PRESENT

14 CHON GUTIERREZ, Director
15 California State Lottery

16 ROBERT AGUALLO
17 State Civil Service Employee

18 JEANETTE BURTON, Former Staff Member
19 Senator Watson's Office

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: The last item of business is Mr. Chon Gutierrez, Director of the California State Lottery.

I have to make a phone call, so we will stand in recess for five minutes, then we'll take Mr. Gutierrez up.

(Thereupon a brief recess was taken.)

SENATOR CRAVEN: Taking the comments from the Vice Chairman, acting in the capacity as Chairman, and expressing the fact that Senator Montoya made a presentation on behalf of Mr. Gutierrez, expressing confidence in his abilities and great interest in his appointment; strong support.

SENATOR MONTOKYA: Very strong support.

SENATOR CRAVEN: Thank you, Joe.

(Thereupon the recess resumed.)

CHAIRMAN ROBERTI: The Committee will come to order.

We'll continue, then, with the appointment of Mr. Chon Gutierrez, Director of the California State Lottery.

Are there any other witnesses in support of Mr. Gutierrez who would like to speak this afternoon? Yes, please come forward.

MR. AGUALLO: Mr. Chairman and Members, my name is Robert Aguallo. I'm a State civil service employee, have been with the State for 14 years.

I've known Mr. Gutierrez for the last 18 years. I come forward to express my support.

I've submitted a letter for the record on April 14th.

1 I have the greatest respect for this man, and I know of
2 him at the Department of Finance, where he was -- assisted in the
3 affirmative action program and was respected by many there for
4 his fairness and assistance to other employees.

5 I would also add that the Hispanic community views
6 Mr. Gutierrez as a role model, and they have also sent letters on
7 behalf of his support.

8 I would recommend his expeditious approval. Thank you.

9 CHAIRMAN ROBERTI: Thank you very much.

10 I have also been contacted, for the record, by Mr. Mario
11 Obledo, representing LULAC, in support of Mr. Chon Gutierrez'
12 appointment.

13 Last week we had the situation concerning Mrs. Ortega.
14 I understand from my conversations with you, Mr. Gutierrez,
15 between last week and this, that Mrs. Ortega's position before
16 civil service now is a sort of de novo situation, where the past
17 dispute and/or blemish, whatever you want to call it, that was on
18 her record is no longer there. So therefore, she's free to
19 compete for civil service positions without regard to the past
20 problems at OEO or the Department of Finance.

21 MR. GUTIERREZ: That is my understanding, Mr. Chairman.

22 CHAIRMAN ROBERTI: Senator Petris.

23 SENATOR PETRIS: I think she indicated her plans for
24 future employment. I don't remember which agency.

25 Do you happen to know?

26 MR. GUTIERREZ: I am not aware specifically where she
27 was seeking employment, but she is actively seeking employment
28 with the State.

1 SENATOR PETRIS: It's not likely to be in your shop?

2 MR. GUTIERREZ: We don't use the class that she has
3 civil service rights to. There are many other departments that
4 do, however, Mr. Chairman, all the way from EDD, to Rehab., to
5 Fair Employment and Housing, to Corrections. A variety of
6 different departments use that class.

7 CHAIRMAN ROBERTI: When Mrs. Ortega was relieved from
8 the Department of Finance, were you her immediate supervisor?

9 MR. GUTIERREZ: I was in the chain of command and was a
10 supervisor, but there was one, two, three, four intervening
11 levels of supervision between herself and myself.

12 CHAIRMAN ROBERTI: Did you participate in the decision
13 to fire her?

14 MR. GUTIERREZ: I did not participate in that decision.
15 The decision was made by the personnel functions, which reported
16 directly at that time to Cliff Allenby and/or Dave Willis.

17 CHAIRMAN ROBERTI: At that time when she was relieved of
18 her position in the Department of Finance, the actions that had
19 taken place, the alleged actions that had taken place, were you
20 in the Department at that time?

21 MR. GUTIERREZ: I was not, Mr. Chairman. The alleged
22 incident that was discussed at the last meeting occurred in
23 September of 1981. I joined the Department of Finance in April
24 of 1982.

25 CHAIRMAN ROBERTI: So your specific supervision over
26 her, I understand, as to one of the occasions when she was
27 relieved of her employment occurred at OEO, but not at the
28 Department of Finance?

1 MR. GUTIERREZ: That is correct.

2 CHAIRMAN ROBERTI: And you did terminate her at OEO?

3 MR. GUTIERREZ: I did indeed.

4 CHAIRMAN ROBERTI: Are there any other questions?

5 Is there any opposition in the audience to

6 Mr. Gutierrez?

7 MS. BURTON: Mr. Chairman and Members of the Senate
8 Rules Committee, my name is Jeanette Burton. I'm a former
9 staffer from here, working around the Capitol approximately 18
10 years.

11 Mr. Gutierrez, I want to for the record state I've never
12 met you before, and I have had -- heard good things about you in
13 the past.

14 Unfortunately, I'm here today to oppose you on a
15 personal matter. And I think probably if it had been anybody
16 else, it would have been all right, but I think on this case, it
17 happens probably to be the wrong person to be investigated.

18 But it came to my attention from staff around the
19 building here that in the latter part of November, first part of
20 December, that Senator Watson had made a personal telephone call
21 to Mr. Gutierrez to investigate myself and two others -- one of
22 your staff people and another person that I'm somewhat familiar
23 with, a friend of Senator Watson's from Washington, D.C. --
24 dealing with possibly kickbacks, contract kickbacks, and drug
25 trafficking, from what I understand and gather.

26 I've tried to find information about this and haven't
27 been able to find anything, somewhat what I understand here. And
28

1 I understand that you met with Senator in her office a couple of
2 times regarding this, which I understand that after doing a
3 probe, everything was found to be negative. However, on one of
4 the people, I think, you came back with a positive probe, and
5 turned out you had the wrong person in mind when you did the
6 investigation.

7 CHAIRMAN ROBERTI: Let me ask, Mr. Gutierrez, did you
8 ever participate in an investigation of Ms. Burton?

9 MR. GUTIERREZ: Mr. Chairman, and I apologize in advance
10 if I appear to be nonresponsive.

11 The Lottery Act does require that we have a Chief of
12 Security. The Lottery Act requires that we have a presence of
13 security personnel because most people that are familiar with the
14 Lottery understand that the Lottery will be successful only if
15 people believe that it has integrity and that it's an honest
16 game.

17 For that reason, I was very much involved in the
18 selection of Lou Ritter, our Chief of Security. And he in turn
19 hired about 40 expert Security staff with a long history.

20 We've established processes and procedures internally
21 which we think help to ensure that integrity in the Lottery.

22 One of the things, Mr. Chairman, that is important to us
23 is under what circumstances we discuss the fact that
24 investigations did or did not take place. Our feeling is that
25 investigations are an effort to identify -- to determine if
26 there's some validity to a particular situation. And in many
27 occasions, there is not validity to that situation, and to
28

comment on investigations would be to impugn the integrity of individuals, and we don't want to do that.

CHAIRMAN ROBERTI: I completely appreciate that. I'm really not asking you to comment on an investigation.

I'm really just asking to find out if one took place, so as to whether this line of questioning ought to be pursued or not?

MR. GUTIERREZ: I appreciate that.

Your question is: did we do an investigation of Ms. Burton?

CHAIRMAN ROBERTI: Right.

MR. GUTIERREZ: We have never done an investigation of Ms. Burton.

CHAIRMAN ROBERTI: So you've never done an investigation of her?

MR. GUTIERREZ: No, sir.

CHAIRMAN ROBERTI: I would tend to think, Ms. Burton, that the issue before us this afternoon is Mr. Gutierrez' qualifications as Lottery Director, and of course we're going to vote based on that.

If you have a specific concern over one of the Members, then my best suggestion is that you bring that up, as we normally do, before the Joint Ethics Committee, or somewhere where you could have your grievances heard. I would say that's the proper first course.

As long as Mr. Gutierrez tells me that he never had an investigation of you --

1 MS. BURTON: I think the question is, did Senator Watson
2 call you to ask for an investigation, and --

3 MR. GUTIERREZ: I'll be happy to answer that one, too,
4 Mr. Chairman.

5 I have not talked to Senator Watson about Ms. Burton
6 either.

7 MS. BURTON: Or any other staff?

8 MR. GUTIERREZ: The issue is you, Ms. Burton.

9 MS. BURTON: I think probably that the way the exact --
10 and I've talked to other people and other staff who were in the
11 meeting, said that my name was mentioned, and other staff, and
12 your staff, and the idea was mentioned and it was personally
13 discussed by you and Senator Watson.

14 CHAIRMAN ROBERTI: Pursuant to an investigation of you,
15 Mr. Gutierrez says no, and absent any other kind of information,
16 we have to take it on that.

17 If somebody wants to come forward and say that they have
18 contrary information, that an investigation of you was taking
19 place or something, or the request was made, then I'll be glad,
20 very much, to hear that, or even reopen this hearing --

21 MS. BURTON: Okay.

22 CHAIRMAN ROBERTI: -- if Mr. Gutierrez is not indicating
23 the truth to me. But right now, I tend to take him and do take
24 him at his word.

25 MS. BURTON: Okay, well, that's the main thing I wanted
26 on record. I just wanted to hear it from him if an investigation
27 was done.
28

1 I will supply you names of the people that came to me
2 and were part of it that indicated that such an investigation was
3 done and found to be negative. And the concern was sent back to
4 Senator Watson, which I think found out probably in doing it, it
5 had to do mainly with the request over personal conflict or
6 battle that she and I were having over something completely
7 different.

8 CHAIRMAN ROBERTI: Thank you very much, Ms. Burton.
9 Senator Craven.

10 SENATOR CRAVEN: Mr. Chairman, I've listened to the
11 young lady who gave testimony or asked the question.

12 I think I understand what she asked about, but the point
13 that I want to ask you, if I may, is what does that have to do
14 with Mr. Gutierrez?

15 MS. BURTON: Senator Craven, I think it's probably on
16 using judgment as being the Director of the Lottery.

17 Who do you investigate? I think when you get to what
18 rights do people have -- I've never had any business with the
19 Lottery, never done anything with the Lottery. What right does
20 the Lottery have investigating me?

21 That's a decision that him as Director, which is a very
22 important decision, would have to be made [sic].

23 CHAIRMAN ROBERTI: Her concern is whether the Lottery
24 made an extraneous investigation of her, not pursuant to its
25 portfolio.

26 And I think Mr. Gutierrez has answered the question.
27
28

1 MR. GUTIERREZ: If I might add, Mr. Chairman, it's for
2 exactly the same reason that Ms. Burton would suggest that I
3 consider such a request.

4 CHAIRMAN ROBERTI: Well, yes.

5 SENATOR CRAVEN: Will somebody straighten me out on
6 Senator Watson's role in this?

7 CHAIRMAN ROBERTI: It's apparent right now, as far as
8 Senator Watson making a request of Mr. Gutierrez, and Mr.
9 Gutierrez says that did not happen.

10 So, as far as Mr. Gutierrez' confirmation, Senator
11 Watson has no role, at least as far as his specific confirmation.
12 At least that's the way I view it.

13 SENATOR CRAVEN: But it was Senator Watson who asked Mr.
14 Gutierrez to do something according to the allegations as
15 delineated by this lady.

16 CHAIRMAN ROBERTI: The big issue would still be, as far
17 as this hearing is concerned, what Mr. Gutierrez' response was,
18 and whether that was proper.

19 Right now we have no information that Mr. Gutierrez made
20 an improper response, and indeed, made any response at all if
21 there was a response that was made to a question.

22 SENATOR CRAVEN: Let me just ask this, if I may, of the
23 lady.

24 I keep using that term because I can't hear your name.

25 MS. BURTON: Jeanette.

26 CHAIRMAN ROBERTI: Ms. Burton.
27
28

1 SENATOR CRAVEN: Ms. Burton, have you pursued this at
2 all with Senator Watson?

3 MS. BURTON: Yes, and she has admitted it.

4 SENATOR CRAVEN: She, did you say, admitted --

5 MS. BURTON: Admitted that she made a call to
6 Mr. Gutierrez.

7 SENATOR CRAVEN: Fine.

8 MS. BURTON: And besides that, now, of course, I don't
9 know what story she's going to give, but I've also talked to
10 other staff, and I know that Mr. Gutierrez did meet with her in
11 the office. Some of his staff people met with her in the office,
12 and the request was made also, maybe I said, to you, Mr.
13 Gutierrez, and also through your lobbyist who represents the
14 Lottery.

15 MR. GUTIERREZ: For the record, Mr. Chairman --

16 CHAIRMAN ROBERTI: Thank you very much.

17 SENATOR CRAVEN: Thank you.

18 CHAIRMAN ROBERTI: You may conclude, Mr. Gutierrez.

19 MR. GUTIERREZ: Thank you.

20 I have met with Senator Watson. I have met with Senator
21 Watson to discuss a variety of different things, Mr. Chairman,
22 all the way from the game design, to the operation of the
23 Lottery, and things of that nature.

24 I don't mean to be flippant, but I've had similar
25 meetings with Senator Montoya, Senator Torres, Senator Greene.
26 I've tried to touch bases with as many Senators as possible to
27 give them an overview of how the Lottery is operating.

1 I want to again, for the record, be very clear. Senator
2 Watson did not call me at any time in my capacity as Director, or
3 in any other capacity, call me, period, much less on the subject
4 that Ms. Burton is concerned with.

5 CHAIRMAN ROBERTI: Thank you.

6 Ms. Burton, yes.

7 MS. BURTON: Perhaps, Mr. Gutierrez, may we say, did she
8 contact any of your employees, who then contacted you regarding
9 an investigation?

10 MR. GUTIERREZ: Not regarding yourself.

11 MS. BURTON: That's fine.

12 And understand that if I bring in people to testify to
13 the contrary, then --

14 CHAIRMAN ROBERTI: Fine, the hearing is always open
15 until the vote takes place on the Floor.

16 MS. BURTON: Thank you.

17 CHAIRMAN ROBERTI: Which usually is two weeks after the
18 confirmation is reported to the Floor.

19 Thank you very much.

20 SENATOR CRAVEN: Move.

21 CHAIRMAN ROBERTI: Senator Craven moves. Secretary will
22 call the roll.

23 SECRETARY WEBB: Senator Ellis. Senator Mello. Senator
24 Petris.

25 SENATOR PETRIS: Aye.

26 SECRETARY WEBB: Senator Craven.

27 SENATOR CRAVEN: Aye.
28

1 SECRETARY WEBB: Senator Roberti.

2 CHAIRMAN ROBERTI: Aye.

3 The vote is three to nothing; confirmation is
4 recommended to the Floor.

5 MR. GUTIERREZ: Thank you, Mr. Chairman.

6 CHAIRMAN ROBERTI: That concludes our business for
7 today. We are adjourned.

8 (Thereupon this hearing before the
9 Senate Rules Committee was adjourned
10 at approximately 2:45 P.M.)

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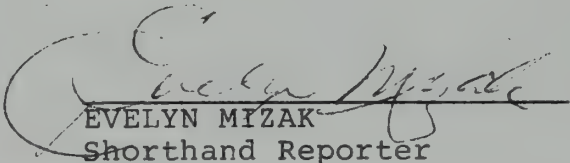
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SENATOR WILLIAM CRAVEN, Vice Chairman
SENATOR JIM ELLIS
SENATOR HENRY MELLO
SENATOR NICHOLAS PETRIS

STAFF PRESENT

PAT WEBB, Committee Secretary
RICK ROLLENS, Consultant on Bill Referrals
NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

GALAL S. GOUGH, M.D., Member
Board of Medical Quality Assurance
NAOMI YOUNG, Member
Fair Employment and Housing Commission
SENATOR WILLIAM CAMPBELL
DR. QUYNH KIEU, M.D.
Vietnamese American Medical Association
Vietnamese Refugee Physicians in the U.S.
JAMES WHEATON, Attorney
Center for Public Interest Law
ELEANOR K. CHOW
Montebello, California
DR. LINDY F. KUMAGAI, M.D., Professor of Medicine
University of California at Davis
CHIEU PHAM
Vietnamese Fisherman's Association
DR. JOHN M. TSAO, M.D., Member
Board of Medical Quality Assurance
GARY LARSEN

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: We'll now take of Galal S. Gough, Member of the Board of Medical Quality Assurance, Division of Licensing.

Senator Campbell.

SENATOR CAMPBELL: Mr. Chairman and Members of the Committee, I'm here today to introduce Dr. Galal Gough, who is constituent of mine and a friend of mine from Whittier.

He's served for one term on the Board of Medical Quality Assurance. He's up for his second term.

He is an OB-GYN who is the Chief Physician at the Montebello Women's Clinic. He has an outstanding reputation, not only as a physician, but as a man of integrity and honesty. I think he has done an outstanding job on the Board and deserves our support for reappointment to that Board.

I'd like to add my name to the list of names that are here in support his confirmation.

CHAIRMAN ROBERTI: Thank you, Senator.

Dr. Gough, we'll ask you what we ask all the Governor's Appointees: Why you feel you're qualified to maintain this position?

DR. GOUGH: Mr. Chairman and Senators, I have served one term on the Board of Medical Quality Assurance and actually was confirmed by the Senate for that.

I was Vice President of the Division of Licensing for two years. I was President of the Division of Licensing for one year. And I was President of the entire Board for one year.

1 And I think that I have been involved in the policy
2 making for the past five years, and am imminently qualified to
3 know what is going on with Board policy, and rules, and
4 regulations that have been occurring during that time.

5 Would it be possible for me to make an opening
6 statement, Mr. Chairman?

7 CHAIRMAN ROBERTI: Yes, please do.

8 DR. GOUGH: First, I want to thank you for allowing me
9 to come before you to speak to you today.

10 Secondly, I want to apologize for any perception that
11 may have been created that I was opposed to any one group of
12 applicants.

13 My father was a Protestant minister, and I was raised
14 with a strong belief that everyone deserves equal respect and
15 treatment under the law.

16 Prior to serving on this Board, I have had a history of
17 community service, being actively involved in the Whittier Boys'
18 Club. I served proudly for two years in the United States Navy.

19 I served one year in Quang Tri City, Vietnam, and while
20 there was in charge of a province hospital, taking care of
21 Vietnamese citizens. I delivered over 1500 babies, performed
22 approximately 500 surgeries, and took care of many medical
23 problems. My primary function was to take care of the Vietnamese
24 people of that area, rather than our own soldiers.

25 For the quality of that work, the President of the
26 United States awarded me the Bronze Star.

27

28

1 As you know, with your confirmation I began serving on
2 the Board of Medical Quality Assurance in 1983. The five years I
3 have spent in this capacity, serving the people of California,
4 have been a great source of pride and accomplishment for me. I
5 feel privileged to have had the opportunity to serve.

6 As a long-time practicing obstetrician and gynecologist,
7 I see a great number of patients, including many who are enrolled
8 in our Medi-Cal programs. I am dedicated to the development and
9 preservation of Board policies which will protect these and all
10 other patients from doctors who are inadequately trained or
11 incompetent.

12 To that end, I have pushed for a variety of improvements
13 in basic standards for training, credentials fraud detection,
14 licensing application review, preparation and administration of
15 examinations, and approval of medical schools. In this role, I
16 have traveled to the Dominican Republic and to the Philippines
17 for the Board of Medical Quality Assurance, and to Japan, Korea,
18 Taiwan, Hong Kong, Thailand, Egypt, and Israel on my own. To do
19 this took time away from my private practice at great personal
20 financial cost. I have no regrets, as it has provided me with
21 knowledge of how other countries train their physicians.

22 I believe that in pursuing these efforts, the Board's
23 job is to protect the public, not the medical profession or any
24 single group.

25 In taking this independent stand on the Board, I have
26 resisted attempts by organized medicine, medical schools, or
27 vested interests to improperly influence the physician licensing
28 process.

1 I look forward to continued service to the people of
2 California as a Board Member.

3 Thank you once again for allowing me to speak to you.

4 CHAIRMAN ROBERTI: Thank you very much, Dr. Gough.

5 Senator Mello has a question.

6 SENATOR MELLO: I just want to ask you one question now.
7 There'll be some opposition stating some of their concerns about
8 the procedures in which the Vietnamese and others have been
9 processed.

10 My question, though, is, you said, "I see Medi-Cal
11 patients."

12 I want to clarify that. Do you see them, or do you
13 actually accept them for reimbursement and treat them as an
14 OB-GYN?

15 DR. GOUGH: I treat them.

16 SENATOR MELLO: The concern I'm getting in this whole
17 area, and the Members of the Medical Quality Board certainly
18 should have a real concern, 15 counties now in the State of
19 California do not have a single physician, a single OB-GYN, who
20 will take and accept a Medi-Cal mother who is about to deliver a
21 child. Because the OB-GYNs have withdrawn from accepting
22 Medi-Cal patients for a variety of reasons -- right now it's high
23 malpractice insurance -- the result of all this is, because of
24 the lack of prenatal care as a whole here, the issue of proper
25 nutrition, the use and abuse of alcohol and drugs, there is a
26 tremendous amount of children born in physical and mental
27 conditions that are costing society a tremendous amount of money.
28

1 I think just the morality of it -- I commend you for
2 accepting them, but I want to ask you, what can you do as a
3 Member of this Board to turn this around?

4 I know the State's partly at fault. I've carried two
5 bills to try to raise the rates. We're paying about half of what
6 the regular insurance provider rates are for delivery of a child.
7 We're paying about 650 now against a \$1500 rate.

8 The Governor keeps vetoing these bills, even though I
9 understand that on May 15th, they're going to raise the rate to
10 \$1,000.

11 What can we do from your perspective to ensure that we
12 can provide necessary services for prenatal care and also to have
13 OB-GYNs accept all patients and not draw the line on those that
14 are treated under Medi-Cal?

15 DR. GOUGH: Senator Mello, I'm not sure that the Board
16 of Medical Quality Assurance, which is really a licensing and
17 disciplinary board, can be involved in that.

18 I do know from my own standpoint that I've always felt
19 that it was a moral issue that I took care of whatever came into
20 my office. It didn't matter to me whether they had private
21 insurance or Medi-Cal insurance.

22 And I can tell you, since you ask, that in our practice,
23 we do about 50 deliveries a month of which about 40 percent of
24 those are Medi-Cal.

25 But I understand the problem, and I think it's a serious
26 problem. And I will certainly do the best I can to bring the
27 issue before the Board and see if we can't come up with some kind
28 of solution.

1 SENATOR MELLO: You mentioned that your responsibility
2 includes discipline to providers.

3 In your opinion, is there an area that you think the
4 Board could assert itself in disciplining those providers that
5 refuse to accept Medi-Cal patients?

6 Going back to the moral issue that you mentioned, many
7 doctors received their training in a public school, paid for by
8 the taxpayers of this State and this country. And once they get
9 their license, then they refuse to kind of pay back to society
10 the investment we made in them. I think that's shocking.

11 Not all of them; many doctors are willing to bite the
12 bullet and accept patients irrespective of their ability to pay.
13 But there's just far too many that won't. There are 15 counties
14 that patients do not now have access to OB-GYNs just because
15 they're on Medi-Cal.

16 I just wonder where we're going?

17 DR. GOUGH: I would be happy for you to pass legislation
18 that would require them to do that. I would certainly see that
19 it would be carried out.

20 SENATOR MELLO: Well, we'll give it some thought.

21 I'm carrying bills to raise the rates. I think that's
22 part of the solution, because I don't want to put all the blame
23 on physicians.

24 Malpractice insurance runs about \$40,000 a year. I
25 guess your rate is similar to that. And with the reimbursement
26 rates so low, it's costing money out of their pocket; but
27 somehow, it's costing us a lot more by not having these services
28 available.

DR. GOUGH: My malpractice runs \$60,000 a year.

SENATOR MELLO: Thank you very much.

SENATOR CAMPBELL: Mr. Chairman, I wanted to add another thing that I initially forgot in my opening comments.

That is that one of the areas that I've been supportive of since I've been in the Legislature is the proper licensing of physicians from out of the country. And it's one of the more difficult aspects that the Board deals with. To ascertain the qualifications of somebody from a foreign country, in many cases with which we do not have diplomatic relations at the time, becomes extremely difficult.

I think Dr. Gough has acted very responsibly in this area and moving toward protecting the public, and at the same time, ensuring that those people who are qualified and come from foreign countries, and who are graduates of foreign medical schools, and who are qualified, are allowed to practice here in California.

I want to commend him for those efforts. I think he's, as he's said, he's done a lot of traveling on his own to visit a lot of hospitals in foreign countries, training schools, I should say, in foreign countries on his own to try and make sure we have a good comprehensive policy here in California.

DR. GOUGH: Thank you.

CHAIRMAN ROBERTI: Is there opposition in the audience? Please come forward.

DR. KIEU: Senators, I am Dr. Quynh Kieu, representing the Vietnamese American Medical Association of Los Angeles and

1 Orange County, and also the Vietnamese Refugee Physicians
2 Committee.

3 We are bringing serious concern to your consideration
4 regarding the nomination of Dr. Gough because, in the process of
5 our involvement with the Board of Medical Quality Assurance,
6 especially the Division of Licensing, we have encountered many
7 difficulties in that area.

8 The Vietnamese physicians have been held by the Division
9 of Licensing for the period of time '85-1988, and during that
10 period of time, in May of 1987, there was a decision coming out
11 from the Division of Licensing to suspend all further licensing
12 of all Vietnamese physicians.

13 Shortly afterwards, our associations got involved with
14 the process and sought to resolve the issues at stake. To this
15 day, we have not received any appropriate answer regarding the
16 causes for such a suspension. We were given some -- some
17 information as to the fact that the Board felt that there was a
18 need to obtain additional information since the process has been
19 going on since 1975.

20 I do not feel that the suspense -- the acute suspension,
21 which created much damages on the individuals who are involved,
22 was justified by such a concern. And there has been no evidence
23 to corroborate the fact that the concern necessitated such a
24 drastic action.

25 During the course of our attempts to negotiate with the
26 Board, we have brought, on request of the Board, much additional
27 evidence and information to the quality of medical education,
28

1 which continues on at the School of Saigon. The bulk of that
2 information was provided to the Board at the September meeting.
3 However, we were not considered at that meeting.

4 In November, again, when it was scheduled as an item of
5 discussion on the agenda, Dr. Gough did have some questioning for
6 me on that proposal. However, far from being relevant to the
7 issues of qualifications and medical quality, or schooling, the
8 questions were totally and completely centered on political
9 affiliations. I recall Dr. Gough mentioned that he had heard
10 that after 1975, 80 percent of the physicians at the School of
11 Saigon were Communists.

12 I have provided a tape of that meeting of the Board of
13 Medical Quality Assurance, Division of Licensing, to staff. And
14 should you want to refer to it, it is available for your viewing.

15 That area of political affiliation, to my knowledge, is
16 completely irrelevant and inappropriate in that type of setting.

17 The other information that Dr. Gough described was a
18 personal experience that he had encountered with a Vietnamese
19 physician who was interning, not in a primary care discipline,
20 was called to start an IV and was unable to do so.

21 There again, I feel that this -- this comment of his was
22 definitely detrimental to the cause of our postgraduates, and did
23 not contribute anything to help towards determining the quality
24 of education and the standards of the curriculum at the School of
25 Saigon.

26 Therefore, in summary, our position is that the
27 Vietnamese graduates have been kept on hold for two years and
28

1 have not been able to receive due process from the Division of
2 Licensing. All our attempts were aborted. Our saga is a long
3 story of unfulfilled promises and stalling on the issue. And we
4 have never been allowed an open and fair hearing process.

5 I am concerned that with the openly prejudicial remarks
6 that Dr. Gough brought at the meeting, that he will not be able
7 to maintain the standards of fairness and impartiality that are
8 advisable and that our State requires from Members of the Board
9 of Medical Quality Assurance.

10 Those same people that Senator Mello referred to, who
11 are much in need of obstetrical care and other types of -- and
12 are very -- are really medically indigent adults or population,
13 the physicians that were blocked by the Division of Licensing
14 would be the ones to provide to their needs. And they were
15 impeded into doing so until, finally, we had to appeal to the
16 Legislature by Senate Bill 1358, which was passed and signed last
17 year.

18 CHAIRMAN ROBERTI: Thank you very much, Doctor.

19 Is there any other opposition in the audience?

20 Dr. Gough, would you like to respond?

21 DR. GOUGH: I'd be happy to.

22 First of all --

23 CHAIRMAN ROBERTI: Senator Petris has a question.

24 SENATOR PETRIS: Perhaps he could respond to that, and
25 then I'd like to ask another witness to come forward.

26 SENATOR CRAVEN: May I ask a question, very short.

27 CHAIRMAN ROBERTI: Senator Craven.
28

1 SENATOR CRAVEN: Doctor, are you licensed to practice in
2 the State of California?

3 DR. KIEU: Yes, I am, since 1978.

4 SENATOR CRAVEN: And when were you certified in Vietnam?
5 When did you graduate from that medical school?

6 DR. KIEU: I graduated in 1975.

7 SENATOR CRAVEN: In your opinion, did the teaching, or
8 the administration, or the general milieu of the med. school in
9 Saigon change following the time of your graduation?

10 DR. KIEU: I was -- I immigrated to the United States in
11 1975, Senator. However, there is a massive bulk of evidence that
12 our association has gathered which leads to -- which proves
13 without any shadow of doubt that the Communists were not able to
14 substantially change the curriculum of the School of Saigon for
15 the -- for all the classes which had entered the school before
16 1985.

17 See, these people were needed to provide care for the
18 population, so therefore, the medical school was allowed to
19 continue on in order to offer that care.

20 SENATOR CRAVEN: So for those people, if you will, as we
21 say, that were in the pipeline, they did not change those?

22 DR. KIEU: That's correct, Senator.

23 SENATOR CRAVEN: But you give me the impression that
24 perhaps following the graduation of the freshmen of that group,
25 it possibly did change.

26 DR. KIEU: That's correct, Senator. There were some
27 changes with the curriculum and with the admission examination
28 criterias, which were changed after 1975.

1 And that brings me to recollect that Dr. Gough, on the
2 day of the meeting of the Division of Licensing, did -- when
3 after he asked me regarding the political affiliation of the
4 Vietnamese physicians, that I explained to him that it was
5 completely irrelevant because the group of physicians that I
6 offered the proposal for were the ones who entered the school
7 before 1975.

8 SENATOR CRAVEN: Yes, I believe I understand, Doctor,
9 what you're saying. And I'm not going to quarrel with your
10 thought as to the relevancy of what the Doctor said.

11 But I will ask you one question. Did you feel that he
12 was in error in the statistic that he quoted you?

13 DR. KIEU: Yes, your Honor, Senator. There is -- I
14 thought that using a statement which came from an anonymous
15 letter, and using an 80 percent and 20 percent was a rough, a
16 very -- using a very general brush to paint the people who were
17 in Vietnam and were not able to immigrate.

18 After the fall of Saigon since 1975, we know that there
19 have been nearly one million people who have continued to seek to
20 flee the country, and that in itself attests to the fact that
21 these people do not wish to live under the Communist yoke.

22 SENATOR CRAVEN: Very good. Thank you, Doctor.

23 CHAIRMAN ROBERTI: Thank you, Doctor.

24 Dr. Gough.

25 DR. GOUGH: I would like to respond to several things
26 that Dr. Kieu said.

1 First of all, at the meeting in which she is referring
2 to, Dr. Kieu was giving testimony as to what she thought was
3 occurring in Vietnam before and after 1975.

4 The Board had received a letter -- not an anonymous
5 letter -- but a letter from a Vietnamese physician. And it
6 stated in that letter that after 1975, between the years of 1975
7 and 1979, that 80 percent of the applicants were either members
8 of the Communist Youth League, or their parents were Communist
9 Party members. And that after 1979, 100 percent were.

10 And in addition to that, that the students were required
11 to take indoctrination courses during medical school. And also
12 that they had had no premedical school training.

13 Now, Senators, forgive me, but I was concerned about
14 that, and I only asked a question. I did not make any kind of
15 statement. I didn't have any knowledge of that. I just asked
16 the question if she had any knowledge of that.

17 She said, "no," and I think the video tape will state
18 that I said nothing further.

19 She also stated that I said that I had had an experience
20 with a Vietnamese student or intern, or whatever. That is not
21 correct. Dr. Al Rider, who was President of our Division, is the
22 one who made that statement.

23 I have never had any kind of experience with a
24 Vietnamese intern, student, in this country.

25 SENATOR MELLO: Excuse me, Mr. Chairman.

26 Can you define what the word "experience" might mean?
27
28

1 DR. GOUGH: Well, in a training situation where I could
2 observe their -- what they were doing as far as starting IVs, or
3 doing surgery, or --

4 SENATOR CRAVEN: Professional observation.

5 DR. GOUGH: Yes, thank you.

6 CHAIRMAN ROBERTI: Is there further discussion. Senator
7 Campbell.

8 DR. GOUGH: Do you want me to explain to you why we held
9 up the Vietnamese?

10 CHAIRMAN ROBERTI: Yes.

11 DR. GOUGH: And how we got involved in it in the first
12 place.

13 We have a chronology that was prepared by the Attorney
14 General. I'm not going to read it. I'm just going to try and
15 summarize what I can remember out of it.

16 In 1984, there were approximately 30 Vietnamese
17 physicians arrested by the Attorney General for fraud involving
18 Medi-Cal. The Attorney General's Office called our staff and
19 said, "What is going on with the Vietnamese physicians? How are
20 they being licensed? Are they all doctors? What is happening?"

21 At that time, Mr. Wagstaff, who is our Executive
22 Director, gave the staff the job of trying to find out what was
23 going on. And what we found out was, with the help of the
24 American Medical Association, a Faculty Council in Exile had been
25 established here in the United States which was centered in
26 Chicago. And this Faculty was responsible for attesting to the
27 qualifications of the various applicants.

1 We had been accepting that on face value and licensing
2 those physicians. As a matter of fact, Senators, there have been
3 approximately 420 Vietnamese physicians licensed in the State of
4 California.

5 CHAIRMAN ROBERTI: How many applications are there for
6 licensure?

7 DR. GOUGH: How many total applications?

8 CHAIRMAN ROBERTI: By the Vietnamese.

9 DR. GOUGH: I don't know the answer to that.

10 At that particular time, there was a tremendous turmoil
11 going on with regards to the licensing process. We had
12 information that the FLEX examination, which is the test that is
13 given to foreign medical graduates, was on the street, being sold
14 on a regular basis. We had information that there was a lot of
15 fraudulent documentation coming out of the Caribbean, that there
16 were actual schools down there where applicants did not even
17 attend.

18 So then, all of our resources went to investigating that
19 particular problem. And the Vietnamese problem was put on hold
20 because it was such another serious problem that we had with the
21 Caribbean situation. And I mean, all of our resources were put
22 on to that.

23 We tried to come up with the proper answers. I think we
24 did that. I think that we were sued by most of the schools in
25 the Caribbean. We happen to have either won those cases or
26 satisfied to everyone's concern.

27
28

1 Then our attention, in late 1985, was placed back on the
2 Vietnamese situation. And interviews were undertaken by the
3 Attorney General of the Council in Exile. They came back to us
4 and told us, "Look, there are a lot of inconsistencies here. Put
5 everything on hold."

6 That's why we put it on hold. It wasn't my decision. I
7 can't make that decision. I was given the information by the
8 Attorney General and by our own attorneys.

9 So, that's what -- that's how we got into this
10 situation. It wasn't something I decided. I certainly didn't.

11 In fact, we have a lot of Vietnamese applicants who have
12 tremendous stories about how they were able to get out of Vietnam
13 without a shirt on their back. I have sympathy for them. I feel
14 sensitive to that

15 Now, the status is, since the legislation has been
16 passed, that we are reviewing all of those 21 applicants out of
17 the 31 applicants that we are talking about, are now in the
18 process of moving on. Two of those people have been licensed.
19 And it is actively going on right now.

20 Thank you.

21 CHAIRMAN ROBERTI: Thank you.

22 Senator Mello.

23 SENATOR MELLO: I've been listening very carefully to
24 your testimony, because people from immigrant families, like
25 myself and most of those here, are very sensitive about the way
26 our families have come to seek opportunities in this great
27 country, and the Statue of Liberty, which means so much.
28

1 It seems to me that you're saying, and what I'm opposed
2 to, is the Vietnamese as a class, Blacks, Mexicans, Portuguese,
3 Italians, Greeks, and so forth on down.

4 I think I'd rather hear you say on an individual,
5 one-by-one basis, "we found this and we found that."

6 I hope you can respond to that.

7 DR. GOUGH: Well, I didn't mean to pick out that
8 particular group.

9 SENATOR MELLO: Bill, I'd appreciate hearing from the
10 witness there, because you're a good counsel, Bill, and might put
11 the right words in his mouth.

12 DR. GOUGH: I mean, we're talking about one school.
13 We're talking about the University of Saigon.

14 SENATOR MELLO: Yes, one school, but were there other
15 Vietnamese that were not from that school who had other
16 credentials that were --

17 DR. GOUGH: Not that I know of.

18 SENATOR MELLO: Everybody from that school raises a
19 suspicion that their certification is suspect in not meeting the
20 standards?

21 DR. GOUGH: Let me tell you this.

22 Prior to 1975, prior to the fall of Saigon, we were --
23 we felt comfortable with the documentation that had been provided
24 to us, and we were licensing those people, those applicants.

25 We didn't know what happened after the fall of Saigon.
26 And that's when the Attorney General told us we had to put these
27 people on hold; we have to stop.

1 SENATOR MELLO: But Mr. Wagstaff's a good, personal
2 friend of mine, and I've discussed and referred some cases to him
3 of people trying to become certified.

4 And it appears that you don't rely on the fall of Saigon
5 or what happens in Chicago. Every applicant has to meet
6 standards of the State of California, which in one case, we had a
7 doctor that was practicing in Guadalajara, Mexico, certified by
8 their government, but in discussing this, he failed to have two
9 or three prerequisite course in his university training, so he
10 could not transfer a license from there to here automatically
11 because our standards are higher. For him to qualify here, he
12 had to go back to college, take up these courses, and then take
13 the examination, and then --

14 DR. GOUGH: That's correct.

15 SENATOR MELLO: So the point I'm trying to make is, why
16 do we put so much emphasis on a Chicago-based certification
17 college, or what happens in the fall of Saigon or the rise of
18 Saigon, when California ought to be saying, "This is the standard
19 you have to meet." And if you can meet our standards, hopefully
20 they're high enough that irregardless --

21 DR. GOUGH: I would be happy for you to pass legislation
22 that would say that.

23 SENATOR MELLO: -- of your race, your color, your
24 national origin, or anything.

25 I'm trying to explore to see whether or not your
26 operation on the Board of Medical Quality Assurance is that of
27 treating people on their individual record rather than their
28 color.

1 What I don't support is just arbitrarily taking it group
2 by group and treating them as a group rather than an individual.

3 I think we've done too much of that in the past. We
4 just have to fight it in the future to make sure that America
5 really stands for what we have in the Constitution.

6 SENATOR CAMPBELL: I agree, and I think what he was
7 referring to, this was a school that he was referring to, not
8 individuals per se; that it was the one medical school that at
9 one point we had knowledge was providing good instruction, and
10 then we have no communication, unfortunately, with them at all at
11 this point. Nobody's been able to get in Saigon.

12 SENATOR MELLO: I'm a little gun-shy. My mother was
13 born here in California, yet she lost the right to vote because
14 she married my father, who came from Portugal. Many people don't
15 believe that. You talk about discrimination, we've had it.
16 That's why --

17 CHAIRMAN ROBERTI: My grandmother as well. She lost her
18 right to vote because she married an Italian citizen.

19 SENATOR MELLO: Senator Roberti and I talked about this.
20 I even told Senator Watson, "You may have ridden in the
21 back of the bus, or you may have had to pay a poll tax to vote.
22 My mother, who was born here, never committed a crime, couldn't
23 even vote."

24 Thank goodness we've overcome those forms of
25 discrimination. The Alien Land Laws directed at foreigners from
26 Asia. We've had all kinds of things.

27
28

1 Still, this is the greatest country in the world because
2 we learn from our shortcomings, and we have corrected them. I'm
3 proud to be an American, and my whole family is.

4 You know, there's been a struggle. That's why I think
5 people who come here should have the benefit of the struggle of
6 others before them and not be discriminated against.

7 CHAIRMAN ROBERTI: Senator Petris.

8 SENATOR PETRIS: I don't have a clear picture of the ins
9 and outs in this Vietnamese thing, and as you can see, there's a
10 concern of the Committee where we'd like to get the full picture
11 and see what corrections, if any, might need to be made.

12 Since the Caribbean crisis was resolved, the attention
13 of the Board is now back on the Vietnamese group; is that right?

14 DR. GOUGH: It was, Senator Petris. The new legislation
15 that was recently passed --

16 SENATOR PETRIS: Is that the Royce bill?

17 DR. GOUGH: That's correct, was -- provided for another
18 Faculty in Exile.

19 SENATOR PETRIS: Did the Board take any position on that
20 bill?

21 DR. GOUGH: They did.

22 SENATOR PETRIS: Was that in opposition?

23 DR. GOUGH: That was.

24 SENATOR PETRIS: What was the reason for that?

25 DR. GOUGH: Well, we felt that it was our responsibility
26 to investigate the individual problems and not give that to a
27 particular body.
28

1 We were concerned that next it would be the Iranians,
2 because we were having a lot of Iranian applicants come here,
3 too, who had poor documentation. Then we would have to set up a
4 council for them.

5 We didn't know what was going to happen in the future,
6 and we didn't want to have to set up a council every time another
7 country got into difficult.

8 And we were not able to get any documents out of
9 Vietnam. For instance, I'll give you an example. We have a
10 number of Russian applicants who come here and who apply for
11 licensure. We are able to get a curriculum out of Russia; we can
12 do that. So that helps in that decision making.

13 But with the Vietnam situation, we were not able to get
14 anything, and we were afraid if we gave that responsibility to
15 someone else, that that would entirely take it out of our hands.

16 That's okay. That's what was done, and that's what's
17 being done. But it took a law to make that.

18 I mean, I think -- I think I have a responsibility to
19 the public of California to provide them, when I give a license,
20 or when I -- I don't give a license, but when I say that someone
21 is okay for licensure, I want to be sure that their
22 qualifications are such that they're going to give good care to
23 the people of California.

24 SENATOR PETRIS: Is that Council advisory, or does it
25 act instead of BMQA?

26 DR. GOUGH: That Council makes the decision, and then
27 presents that to the Division. But the Division then has to
28

1 prove that that cannot be done. For instance, that these cannot
2 be licensed.

3 We can't do that. There's no way I can go to Saigon and
4 find out what's going on. I cannot do that.

5 So in effect, what we do is rubber-stamp. I mean,
6 that's in effect what we do.

7 Now, that bothered me. I'm just saying that to take
8 that responsibility out of my hands, I'm saying to the public of
9 California, "Okay, here, I'm just rubber-stamping this."

10 SENATOR PETRIS: Speaking of the Iranians, it's been
11 alleged that you interviewed an Iranian in a separate oral
12 examination, which was something out of the ordinary.

13 DR. GOUGH: Do you want me to tell you what I did on
14 that?

15 SENATOR PETRIS: Yes.

16 DR. GOUGH: I'll be happy to.

17 As I told you before, I have a big practice. I see a
18 lot of patients everyday. But I see every person that comes to
19 my office who has a concern about obtaining their license.

20 A gentleman, approximately 60 years of age, came to my
21 office. He was a professor from Iran in Urology. His wife was
22 also a physician in Iran. And they came to this country, and
23 they presented all their documentation to the Board.

24 The wife had all of her documentation, and so she was
25 then approved to take the oral examination that we give in
26 California.

1 The husband had lacked one piece of paper that he did
2 not have. And he came to my office and gave me that story.

3 So, what I normally do is, I call the Board in
4 Sacramento and find out what the status of the applicant is.
5 That's what I did. And I was told that he lacked this one piece
6 of paper. I don't remember what it was.

7 So, I advised our staff to allow him to take the oral
8 examination. We would not give him the result until he was able
9 to provide that one piece of paper that we required.

10 So I did intervene in that matter. That was done.

11 SENATOR PETRIS: Did you conduct the exam?

12 DR. GOUGH: I did not conduct that examination.

13 He obtained his piece of paper, and then was told that
14 he failed the examination. He wife passed; he failed.

15 He than came back to my office and said that the
16 examiners who examined him were prejudicial against him. They
17 asked him questions that had nothing to do with general knowledge
18 of medicine. They -- he was embarrassed and offended by their
19 demeanor.

20 And I felt very sensitive to this, okay? Particularly
21 since all this problem had been going on. And so I told him,
22 "Well, there's nothing that I can do about the fact now. You
23 took the examination and you failed it. But I will ensure that
24 you are examined properly the next time you take the
25 examination."

26 Now, I go to most of the oral examinations. Let me
27 explain to you what an oral examination consists of.
28

1 Basically we want to know does the applicant have a
2 basic working knowledge of medicine. It's not a comprehensive
3 examination. They've already taken all those examinations. So
4 it's about a 15-minute interview.

5 So, the doctor came up for re-examination again. On
6 that day, I was examining several physicians, and I examined him.
7 I examined him at length to ensure to myself that he was either
8 competent or incompetent, and that he was treated fairly.

9 Remember that the Board is being accused of treating
10 people unfairly. And I was trying to ensure that this man was
11 treated fairly because he was complaining about it.

12 So yes, I did examine him. It wasn't irregular. I
13 examined a lot of people that day, as I have done in the past. I
14 was a Commissioner for many, many years before I became part of
15 this Board. I examined lots of people. So I know the process,
16 and I knew what I was doing.

17 And he did pass that examination and was given a
18 license.

19 SENATOR PETRIS: Now, Mr. Chairman, there's a lawsuit
20 pending here. I don't know what it's about, but it has to do
21 with the subject of the Vietnamese, so we can't go into the
22 lawsuit.

23 But there is somebody here I'd like to have come forward
24 and shed some additional light on this , Mr. Wheaton.

25 CHAIRMAN ROBERTI: Mr. Wheaton, please come forward.

26 MR. WHEATON: Thank you, Mr. Chairman, Senator.
27
28

1 SENATOR PETRIS: You've heard the discussion so far on
2 the Vietnamese.

3 I'm interested in the Board's policies and process and
4 procedure. Now, what the doctor's told us so far sounds very
5 reasonable to me. He says that you've got a group of people who
6 come over; they don't have the documentation. Then a bunch of
7 problem develop among some that were licensed.

8 The Attorney General jumps on them and gets into the
9 picture, and they're ordered to hold up the procedures.

10 Can you take it from there and comment on it? Tell us
11 what the problem is according to the way some of the applicants
12 see it?

13 MR. WHEATON: Certainly, Senator.

14 Mr. Chairman, my name is James Wheaton. I'm with the
15 Center for Public Interest Law. We represent the class of all
16 the Vietnamese who have not been treated fairly by this Board
17 during Dr. Gough's tenure as President and Vice President and a
18 member of the Division of Licensing.

19 The chronology that Dr. Gough gives is in some ways
20 interesting, because in a four-hour deposition under oath, under
21 penalty of perjury, when asked specifically about the Vietnamese,
22 about their training, what evidence did he have, what documents
23 had he read, he said, "I do not recall. I do not remember. I
24 have no recollection," 152 times.

25 He didn't remember anything about these Vietnamese. He
26 didn't remember the meeting six months ago.

27
28

1 The situation is this. These Vietnamese came over with
2 limited or no knowledge of English. Within three or perhaps four
3 years, they have mastered the English language. They have
4 mastered the American medical system. They passed every single
5 examination with flying colors, had applied to this Board and had
6 supplied their documentation, and the Board had accepted that and
7 encouraged them to continue in the process: to take their
8 written exams, their oral exams, to get into postgraduate
9 training, and to perform as physicians.

10 In a secret meeting in January of 1986, this Board, this
11 Credentials Committee of which Dr. Gough was a member, made a
12 secret, unannounced decision to suspend processing.

13 Under oath, the staff and the Board members have all
14 testified they had no information that any of the Vietnamese were
15 deficient. They had no information that in fact there was any
16 problem with the clinical education. They had no facts on which
17 to base that decision, only a suspicion that there was a problem.

18 They never announced that decision to the applicants.
19 Instead, they told the applicants they could continue through the
20 process. Indeed, one applicant was told that she was now ready
21 for licensure and please pay \$200 and she'd get her license. She
22 did so. She paid her \$200 and never received her license, never
23 received a response until, six months later, the Board announced
24 that they were suspending processing and never told the
25 applicants why.

26 When applicants pressed, and Dr. Quynh Kieu on their
27 behalf came to the Board and asked what was the problem, what
28

1 information could she give, they said, "Tell us about the
2 curriculum. Tell us about the faculty."

3 She went on a worldwide search of faculty members who
4 had fled and provided that information to the Board in a
5 voluminous document that detailed down to the hour who had had
6 training in anatomy, in physiology, and so forth; who were
7 professors; who left when; who remained; what were their
8 credentials. She supplied that voluminous document to the Board,
9 and Dr. Gough has testified he never read it.

10 Dr. Gough instead, at that meeting, held up a piece of
11 paper of an anonymous person, who he has testified he does not
12 know, who he has testified he has no information about, and said,
13 "Isn't it true that you're all Communists?" And then never voted
14 on that. Instead, said we would seek some sort of individual
15 review.

16 Those applicants, weary of their year-long secretive
17 treatment --

18 CHAIRMAN ROBERTI: Is that what he said, "Isn't it true
19 you're all Communists?"

20 The way he had phrased it in speaking to Dr. Kieu was
21 more based on, am I to understand the enrollees after 1975 were
22 80 percent.

23 DR. GOUGH: That's correct, Senator.

24 And if he is going to say that, he'd better be sure what
25 he's saying, because he's lying. I'm telling you that right now.
26 that is not what I said.

1 MR. WHEATON: Senator, I have here his sworn deposition.

2 And we have a video tape of that meeting in which he holds up
3 that piece of paper, and in his deposition he said he had no idea
4 who that was from; he has no idea about the credentials; he has
5 no idea when they left. And that people at the medical school
6 after 1975 were 80 percent Communists.

7 Dr. Quynh Kieu responds as best she can, as calmly as
8 she can, that that's not at issue. And Dr. Gough indicates that
9 he's heard enough; that he doesn't want to hear any more.

10 When these applicants then invoke their rights under
11 this State, under the Administrative Procedure Act, to ask for a
12 hearing so these issues can be brought out into the open, Dr.
13 Gough and the other members of the Credentialing Committee turn
14 around and tell those applicants that if they will withdraw that
15 request for a hearing, then he will, in a secret meeting, revisit
16 their credentials and perhaps license them.

17 These are people who for two years are unable to do
18 anything. They hand their lives over and are told to withdraw
19 from their rights.

20 This Board and Dr. Gough have consistently done what
21 they could to stop these people from getting licensed, and it is
22 only the intervention of this body of the Senate, of the Assembly
23 and Governor, signing a bill that passed nearly unopposed in both
24 Houses, that have allowed these people to go on.

25 SENATOR PETRIS: Is that Senator Royce's bill?

26 MR. WHEATON: That's correct, Senator.

27 CHAIRMAN ROBERTI: Senator Craven.
28

1 SENATOR CRAVEN: Thank you, Mr. Chairman.

2 I want to ask of the witness, going back just a little
3 bit, this has to do with a comment relative to the percentage of
4 Communists and so forth.

5 You made reference to a deposition, but as I recall, the
6 doctor's comments were made in context of a hearing which was
7 video taped. And you sort of referred to what you said was a
8 deposition as if it were a transcript, which is, of course, not
9 what it is.

10 Is that not correct?

11 MR. WHEATON: The video tape, I understand from the
12 staff, has been partially transcribed for you.

13 SENATOR CRAVEN: I see, but you have no copy of that
14 with you?

15 MR. WHEATON: I have viewed the video tape.

16 SENATOR CRAVEN: You have viewed the video tape.

17 MR. WHEATON: And the video tape has been provided to
18 the Senate staff.

19 SENATOR CRAVEN: I see, well, in other words, I get now
20 the impression that now the doctor and yourself have conflicting
21 thoughts or ideas as to what, in fact, was said. But the video
22 tape would, of course, be the delineator of that; wouldn't it?

23 MR. WHEATON: It certainly would. It certainly would
24 provide that.

25 SENATOR CRAVEN: Thank you, sir.

26 CHAIRMAN ROBERTI: Maybe we're going to have to watch
27 some television.
28

1 Senator Ellis.

2 SENATOR ELLIS: Well, we're hearing from counsel for the
3 Plaintiff. Are we going to hear from the counsel of BMQA?

4 CHAIRMAN ROBERTI: Oh, yes, if he wants to have other
5 witnesses.

6 DR. GOUGH: That's impossible because that's the
7 Attorney General, and the Attorney General's Office advised that
8 attorney not to come to this meeting.

9 MR. WHEATON: I would be happy, Senator, to provide a
10 copy of the deposition, if that would assist your deliberations.

11 SENATOR ELLIS: Just to make sure everything's fair, I
12 just thought we ought to hear from the Attorney General.

13 MR. WHEATON: Of course at the deposition he was -- Mr.
14 Edward Hill, who was the Deputy Attorney General, was present and
15 provided vigorous representation, I can assure you.

16 DR. GOUGH: Also, this is an ongoing lawsuit. I don't
17 think that I can comment on the deposition I made, or what's
18 going on in the lawsuit.

19 I don't think this is where it should be tried.

20 MR. WHEATON: I want to join, actually, with the
21 doctor's comments.

22 We were reluctant to attend but were called upon by
23 members of the staff to please provide information, provide
24 public information, which is what a deposition is, provide public
25 facts, which is what the Board's documents are.

26 The Center for Public Interest Law is not taking an
27 institutional position here. We were called upon to provide
28

1 facts, and we believe that we should not try a lawsuit here in
2 the Senate.

3 On the other hand, the Senate does have a constitutional
4 responsibility, and we, as officers of the court, have a duty to
5 bring information to you. And we believe that we are doing that.

6 SENATOR ELLIS: Well, we all appreciate that
7 information, but --

8 SENATOR PETRIS: May I ask --

9 SENATOR ELLIS: -- but I still think it's only
10 reasonable that we hear from the Attorney General.

11 MR. WHEATON: Absolutely.

12 SENATOR PETRIS: I agree.

13 Mr. Chairman, may I ask a couple more questions here.

14 How many members of the class are there that are in
15 litigation?

16 MR. WHEATON: At present?

17 SENATOR PETRIS: Is it thirty-one?

18 MR. WHEATON: At present there are 31 pending
19 applications, or were 31 pending applications from Vietnamese.
20 There are well over a hundred Vietnamese refugees in the United
21 States who may or may not apply to California. So there's an
22 immediate class of 31 with a potential 100 or more.

23 SENATOR PETRIS: Have they been admitting people from
24 this chronological period, have they been admitted to practice in
25 any other states?

26 MR. WHEATON: With only one exception I'm aware of,
27 every single one of them has been admitted in other states: in
28

1 Virginia, Illinois, Michigan, Florida, Colorado, Washington, and
2 elsewhere.

3 Many of them, in fact, are practicing. Some have had to
4 -- one fellow in particular has had to practice in Chicago while
5 his wife resides here because he can't -- couldn't get licensed
6 here.

7 SENATOR PETRIS: Are there any former faculty members
8 who reside in California?

9 MR. WHEATON: Yes, all of the members of the Faculty in
10 Exile Committee that was created by this body, all reside in
11 California and have always been available to the Board. Many of
12 them, in fact, are quite high officials. We have a former
13 Minister of Education, a Minister of Health. We have former
14 deans, vice deans. We have deans of the Catholic School, all of
15 whom have come forward repeatedly to the Board with the
16 information they have.

17 SENATOR PETRIS: Now, has there been any change in the
18 procedure or style of the Board since the lawsuit was filed?

19 MR. WHEATON: In the legal procedure, only because this
20 Legislature has forced them to take it; although, it is over Dr.
21 Gough's personal opposition. And again, in his sworn testimony,
22 he indicates he still does not trust the Vietnamese; that he
23 still does not trust their memories or recollections, although he
24 himself has trouble remembering facts.

25 The attitude, however, has not changed. Indeed, at the
26 Board's last meeting, there was quite a lengthy colloquy among
27 the Board members about how distrustful the Vietnamese were, and
28

1 how we really ought to be relying on them in licensing decisions.
2 This was all in the context of discussing this particular bill,
3 SB 2400.

4 CHAIRMAN ROBERTI: I think Dr. Gough would like to
5 respond.

6 DR. GOUGH: Well, I would just like to respond by saying
7 I wasn't there at the last meeting, so don't put me in that
8 class.

9 I mean, if you're going to accuse us of something, I
10 wasn't there at the last meeting to discuss.

11 SENATOR PETRIS: My question went to the Board as a
12 whole.

13 Frankly, over the years we've heard complaints from
14 foreign applicants about a bias of the staff. It was before your
15 tenure, actually. A bias of the staff against foreign born or
16 foreign trained doctors.

17 I guess sometimes it's based on rigid comparison of
18 standards, and other times it isn't. But from the standpoint of
19 the applicants, it still comes out as a very negative thing.

20 I don't want to get into the lawsuit any further, but I
21 appreciate your being here.

22 CHAIRMAN ROBERTI: Dr. Gough, the attorney, Mr. Wheaton,
23 has indicated that Dr. Kieu came up with voluminous notes
24 regarding her investigation as best she could put together of
25 certain individual's curriculum.

26 Did you ever read that?

27 DR. GOUGH: No, sir.
28

1 CHAIRMAN ROBERTI: Why didn't you read it?

2 DR. GOUGH: I don't know. It wasn't provided to me. I
3 didn't see it.

4 CHAIRMAN ROBERTI: It was never provided to you?

5 DR. GOUGH: I did not see it.

6 MR. WHEATON: I have sworn testimony to the contrary
7 from the former Assistant Executive Director who says that he
8 personally ensured that it was specially hand-delivered to the
9 Board members on September 17th of 1986.

10 CHAIRMAN ROBERTI: Any other questions of Mr. Wheaton?
11 Thank you very much.

12 MR. WHEATON: Thank you, Mr. Chairman.

13 CHAIRMAN ROBERTI: Is there any other opposition in the
14 audience or support?

15 I take it you're support, so why don't you come forward.

16 MS. CHOW: Thank you, Mr. Speaker and Members of the
17 Senate.

18 I appreciate you giving me just a couple of minutes, and
19 I would like to talk on behalf of Dr. Gough.

20 I'm up here, by the way, at my own expense because when
21 I heard about this, again I was --

22 CHAIRMAN ROBERTI: Just for the record, you have to
23 identify yourself. I know you, but --

24 MS. CHOW: Yes, I'm Eleanor Chow. I'm from Montebello.

25 Dr. Gough has a practice in my community, Montebello.
26 And last -- well, a couple of years ago, when we had much concern
27 about the AIDS problem, he was one of the first to volunteer to
28 come in and talk to our students.

1 And also to answer Senator Mello, he's on service to the
2 needy. I have also seen him do this, and I know of people that
3 he has serviced.

4 So I consider him a very conscientious, very dedicated,
5 high integrity person. And I felt I needed to come and share
6 this information with the Senate Committee.

7 If there are any questions you'd like to ask of me, then
8 I would be more than happy to answer.

9 Because here again, you know, I think all of you
10 Senators, and including myself as a school board member, were
11 elected, and we have to make some pretty hard decisions. But I
12 think we soul search, and we do the best we can, not always to
13 the liking of our constituents or whoever we have to make a
14 ruling on.

15 And here again, I think Dr. Gough may have had to make
16 such decisions, like I have. And I don't think it's fair to zero
17 in on one issue and say he is not qualified to sit on this Board.

18 And when you're talking about the Medical Quality
19 Assurance Board, we must be extremely careful because you're
20 dealing with people's health. And I most certainly want the most
21 highest qualified person to be taking care of my medical needs,
22 and I think that's extremely important.

23 CHAIRMAN ROBERTI: Thank you, Mrs. Chow.

24 Any questions? Thank you very much.

25 Any others? Please come forward.

26 DR. KUMAGAI: I'm Dr. Lindy F. Kumagai. I'm a Professor
27 of Medicine at U.C. Davis, and was on the Board of Medical
28 Quality Assurance from 1980 until 1986.

1 I'm here not to testify against the Vietnamese
2 physicians or their representatives. And I'm certainly not here
3 as a physician protecting another physician, so I don't want to
4 give that impression.

5 I think the issue at hand, however, is that, not in
6 terms of determining whether or not Dr. Gough is inadequate, or
7 what his professional abilities are, but the issue at hand is
8 that of character.

9 There have been some allegations, I think, voiced today,
10 and certainly in other meetings, that have indicated either
11 explicitly or implicitly that, first of all, that he is racist;
12 that he is insensitive to a number of different people; and
13 lastly, that he is biased and especially against foreign medical
14 graduates, and in particular, the Vietnamese.

15 Now, during the years that I worked very closely with
16 Dr. Gough on BMQA, that is mainly between 1983 and 1986, all of
17 those allegations I honestly did not feel at all. I found him to
18 be a very compassionate individual, very thoughtful in his
19 thinking, and certainly critical and objective in his thinking,
20 and by all means very fair. And I think he was certainly very
21 sensitive to the differences in the socioeconomic and cultural
22 backgrounds of not only applicants, but obviously, in the public
23 that he serves.

24 I think that has been well-borne out by the fact that
25 he's among a limited number of obstetricians in California, and
26 especially in his area of Los Angeles, who continue to accept
27 Medi-Cal patients under his care.
28

1 In addition to these characteristics, I think Galal does
2 indeed have very high standards, and his standards are those of
3 excellence. And he does feel very, very strongly about the
4 charge, the major charge to BMQA, and that is protection of the
5 public, and to guarantee that anybody that we licensed -- and I
6 use the term "we" in the sense of BMQA -- that any physician who
7 was licensed to practice medicine in California has been
8 adequately trained.

9 Now, let me just sort of review this in historical
10 perspective because of what the problems were that arose
11 certainly during the time that I worked very closely with Galal.

12 In 1983, as you're well aware, there were a number of
13 critical data and information that was being brought to our
14 attention that some individuals, foreign medical graduates and
15 especially those from the offshore Caribbean schools, were
16 applying for licensure with false credentials, not having even
17 gone to the school. Their diplomas were false.

18 To make a long story short, this obviously presented
19 major problems to our Board. As a result, after very extensive
20 investigation and several public hearings, there were some
21 specific regulations put into place requiring that all foreign
22 medical graduates -- not singling out any particular group --
23 have valid documentation, more than just simply a diploma, but
24 actual certification of certain courses, the durations of
25 courses, to meet the minimal requirements for licensure, medical
26 licensure in the State of California. And once those regulations
27 were in place, I think all of us certainly felt responsible as
28

1 well as obligated to make certain that all applicants meet those
2 minimal requirements.

3 Now, that all transpired from 1983 through 1985, and
4 you've heard much of the story during that particular time.

5 As I mentioned, Dr. Gough felt very strongly about his
6 charge on BMQA, and that is to protect the public and make
7 certain that everyone did meet these minimal requirements. And I
8 think he felt -- he took that not only at heart, but certainly
9 did feel that this should be carried out.

10 The question or the statement has been made that he was
11 singling out a certain group of individuals, especially those
12 from Vietnam.

13 I can guarantee you, because I was on the Credentialing
14 Committee working with him, that his standard was that virtually
15 any individual who could not meet those minimal requirements
16 would simply not be approved for licensure until he or she were
17 able to meet those requirements.

18 So it wasn't just simply a single group of physicians
19 from Vietnam or other specific areas or countries, but anybody
20 who could not provide valid documentation was not passed or
21 approved immediately.

22 And I can assure you that during the time that I worked
23 with Galal very closely, all of his decisions were very, very
24 thoughtful, very fair, and very critical.

25 I think in closing, then, I can only summarize. Well, I
26 don't want to give you the impression that he and I and other
27 members of our Credentials Committee, or the Division of
28

1 Licensing on BMQA, agreed on everything. We had our individual
2 differences, but nevertheless, I think we openly discussed our
3 differences.

4 And the secret discussions, I frankly was not aware of
5 any secret kinds of discussions that went on.

6 Now, with the issue of racism, or allegations that have
7 been made with regard to Dr. Gough being a racist, being of Asian
8 decent myself, I think I'm more than sensitive to those kinds of
9 racial remarks. And during the entire time that I've worked very
10 closely with Dr. Gough, under no circumstances, either during
11 open public hearings nor during private discussions, have I ever
12 heard him either make or imply a racial or sexist kind of remark.

13 I'm very proud to have known someone like Galal, and I
14 have only the greatest respect for him. And I honestly think
15 that the Board of Medical Quality is very, very fortunate in
16 having someone of his character, and someone with his background
17 and expertise.

18 And I sincerely hope that all of you do consider this
19 very, very seriously, because this is a very serious matter, and
20 vote for confirmation of Dr. Gough on BMQA.

21 Thank you.

22 CHAIRMAN ROBERTI: Thank you very much.

23 SENATOR PETRIS: Mr. Chairman, question.

24 CHAIRMAN ROBERTI: Senator Petris.

25 SENATOR PETRIS: Excuse me, Doctor.

26 Your testimony is very impressive. Obviously you treat
27 this subject very seriously.
28

1 Let me ask you now about Board policy as a whole.

2 Because, you know, when we have applicants, or nominees, I should
3 say, for appointment or reappointment, we spend a good part of
4 the time going into the policies of that particular agency
5 itself, and try to elicit the views and recommendations of the
6 member as to where the strengths and weaknesses are and what can
7 be done.

8 Now, as a prior member of the Board, I want to go back
9 to the statement I made earlier that for years we've been hearing
10 charges. I didn't say that they had been established as true,
11 but there is an impression out there that traditionally and
12 historically, the Board has not been fair, or has been biased
13 against foreign graduates who come in to be licensed in
14 California.

15 Do you think the Board conducted itself through its
16 procedures in a fair manner during the time that you were on
17 there with respect to foreign graduates?

18 DR. KUMAGAI: I honestly do think it was done as fairly
19 as possible. And certainly, one will hear those kinds of
20 accusations with regards to the Board being unfair because it did
21 not approve a licensure. And this can apply to not only foreign
22 medical graduates, but certainly graduates out of our own U.S.
23 schools who are applying for California licensure.

24 SENATOR PETRIS: You know, we have a committee in this
25 Senate, Business and Professions, that has jurisdiction over that
26 subject, which held a pretty extensive hearing under Senator
27 Montoya. And they came up with some findings that were rather
28

1 critical, and I want to share a couple with you and invite your
2 comments.

3 DR. KUMAGAI: Yes, sir.

4 SENATOR PETRIS: One:

5 "Violation of the Administrative
6 Procedures Act by requiring a fixed
7 number of hours in certain basic
8 science subjects when no such
9 requirement exists in any statute
10 or adopted regulation."

11 Now, the report went on to indicate that there seemed to
12 be a big difference of opinion between members of the staff and
13 between some members of the Board as to whether or not there were
14 standards, whether or not there were regulations.

15 I don't know why that should be so difficult. You
16 either have regulations or you don't, or you have standards or
17 you don't.

18 But in this instance, the charge was that specific
19 numbers of hours in certain things were held up as a requirement
20 to foreign student applicants but not to locals. That's one.

21 Two:

22 "Violation of the [same act] in the
23 denial of licenses to foreign medical
24 school graduates for failure to
25 satisfy clinical training requirements
26 not contained in any statute or
27 regulation."
28

1 The same type of thing, different field. According to the
2 statement in the report itself from the Committee:

3 "... from December, '83 to January,
4 '86, BMQA used and enforced discrim-
5 inatory clinical training standards
6 that it had never published. When
7 BMQA finally did propose regulations
8 to apply minimum clinical training
9 requirements to foreign graduates,
10 the OAL ..."

11 which is the Office of Administrative Law,

12 "... threw them out on the grounds
13 that many U.S. graduates could not
14 meet [those standards]."

15 Yet, they didn't propose those same standards to U.S. graduates,
16 but this Board said, "Wait a minute. That's over and above what
17 our own people are required to do."

18 The third is:

19 "Failure to follow-up on evidence
20 that U.S. and Canadian medical
21 school graduates do not meet
22 California's clinical training
23 requirements."

24 So there's a bias in favor of U.S. and Canada throughout the
25 country and against the foreign, alleged and cited specifically
26 in the report of the Business and Professions Committee.
27
28

specific weeks, or months in terms of particular course work.

There were -- the courses themselves were certainly indicated and explicitly stated.

Now, the big problem that came up was in 1983, and this was during an open hearing that I conducted as President in Anaheim on this whole issue of foreign medical graduates and the extent of training, and had formed a task force of representatives from CMA, the practicing community, as well as representatives from the medical school. And they came -- this ad hoc or task force committee, looking into foreign medical graduates and education, came up with some specific recommendations.

And at that same meeting, I believe, there was an individual from the Attorney General's Office who did indeed say that the critical issue was that there were applicants applying to California for licensure that came from schools where it was recognized that false documents had been made. Consequently, it was impossible to single out a group of foreign medical graduates, namely those from the Caribbean schools, and so certain requirements were required of all foreign medical graduates.

Now, at this same time, and so once those requirements were in place, we felt that there should be some minimal sorts of standards. Looking at the book that is adopted by the U.S.-Canadian schools in terms of what constitutes a medical education, or an acceptable medical curriculum, there were no specific hours or duration of courses. But nevertheless, the courses there were listed very much like in our own regs.

1 Looking at the various courses in the clinical years, in
2 compiling all the statistical information, it was found that
3 virtually 90 percent or more of the U.S.-Canadian schools, in
4 terms of their training, could certainly meet what we adopted as
5 minimal clinical training requirements.

6 With regards to the basic science requirements, it was
7 considerably different, and mainly because various schools would
8 consider a given course and list it under a different name. And
9 so, it was impossible, certainly, to take and say, "so many
10 hours," or "so many weeks of training in this, this and this."

11 But as a general rule, one could sort of decide that
12 there were certain periods of time that they would have training
13 in certain courses, and this is why those regs were essentially
14 adopted.

15 SENATOR PETRIS: Thank you.

16 What's your field?

17 DR. KUMAGAI: Internal medicine, specifically
18 endocrinology.

19 But I have been a full-time faculty member, not only
20 here at Davis for almost 20 years, but in Utah for nine or ten
21 years, and Harvard prior to that.

22 SENATOR PETRIS: You're one of the founders, then, one
23 of the first --

24 DR. KUMAGAI: Yes, one of the old timers. I suppose you
25 might say that I'm one of the more senile individuals there.

26 SENATOR PETRIS: I wouldn't agree with that.

27 Thanks very much, Doctor.
28

1 CHAIRMAN ROBERTI: Thank you very much, Doctor.

2 Before we break for five minutes, I would like to get
3 back a little bit to some of the comments that were made at the
4 BMQA meetings, one of the prior BMQA meetings.

5 Staff has given me a report, which I might preface, was
6 essentially information given to them. So it's not direct; they
7 weren't there.

8 However, it is said that:

9 "According to witnesses who were
10 present, upon the completion of the
11 hearing Dr. Gough, who had testified
12 on behalf of BMQA at the hearing,
13 approached Senator Royce ..."

14 whom I haven't spoken to about this,

15 "who had been on the hearing panel
16 and said (essentially): 'We're not
17 going to license these people because
18 they were trained by Communists.'

19 According to Julianne D'Angelo of the
20 Center for Public Interest Law, who was
21 also present at the hearing, Senator
22 Royce recounted the remark to her and
23 made it clear that he was offended by
24 the remark."

25 That is all her interpretation, not necessarily that of Senator
26 Royce. Senator Royce subsequently introduced and carried
27 SB 1358.

1 Did you ever make a remark like that?

2 DR. GOUGH: I'll tell you what I said to Senator Royce.
3 It's exactly the comment that I made earlier about the letter
4 that we had received.

5 I quoted to him exactly what I quoted in this hearing
6 today; that's all. And I told him that we were concerned about
7 the fact --

8 CHAIRMAN ROBERTI: That there were placements that were
9 being set aside for --

10 DR. GOUGH: And also that we were concerned about the
11 fact that in their curriculum, a certain amount of time had been
12 to indoctrination, so we didn't now how much of that time --
13 maybe other courses had been cut out. We didn't know what was
14 going on.

15 I did convey that to him.

16 CHAIRMAN ROBERTI: I appreciate that. If that were
17 really coming out of the medical course of the content of the
18 course, but frankly, under the trying, transitional circumstances
19 that these people were faced with, the fact that they're being
20 indoctrinated and subsequently have left that country for the
21 United States, I think, is some kind of indication of where their
22 sympathies are.

23 DR. GOUGH: I'm in sympathy with that, too, Senator.

24 But what I'm saying is that we were told that there was
25 no change after the fall of Saigon in the curriculum. And we had
26 a letter that said something else.

27

28

1 I just merely brought that up. I wasn't accusing
2 anybody of anything. I asked a question. I think it's my
3 responsibility to do that.

4 You're doing that to me. You have documentation there;
5 you're asking me questions about it.

6 That's all I was doing. It was just merely that,
7 nothing more.

8 CHAIRMAN ROBERTI: Also one other point, and I'm a
9 little bit unclear regarding the special examination, once again
10 -- maybe you said it and I missed it -- that you gave to Ahmad
11 Matin; that Mr. Grimm, who I guess is the Executive Director --

12 DR. GOUGH: He was. He was not the Executive Director.
13 He was the Program Manager of the Division of Licensing.

14 CHAIRMAN ROBERTI: The Program Manager --

15 DR. GOUGH: Right.

16 CHAIRMAN ROBERTI: -- had indicated to you that the
17 Attorney General had made a recommendation to void your
18 examination of Ahmad Matin, and that he should be re-examined,
19 and this did not take place.

20 DR. GOUGH: Let me just say that if he said that, he did
21 not convey that to me, and I have no problem with that. I mean,
22 if they felt that I did something irregular and that shouldn't
23 have been done, I have no problem with re-examining him.

24 CHAIRMAN ROBERTI: The impression -- and I'm not saying
25 this is a fact -- but the impression is that you took Mr. Matin
26 out of order --
27
28

1 DR. GOUGH: But I didn't do that. I told you that he
2 came up, his turn came up. I examined him, and I tried to do
3 that --

4 CHAIRMAN ROBERTI: Fine, and I accept that.

5 But that the staff normally engages, I guess, in a
6 random examination.

7 DR. GOUGH: That's correct.

8 CHAIRMAN ROBERTI: Based on the order in which they
9 come.

10 DR. GOUGH: That's correct.

11 CHAIRMAN ROBERTI: And then, for some reason, you, and
12 you indicated the reason, that you decided that you, on your own,
13 could examine Mr. Matin, which, accordingly to some people who
14 held positions at BMQA, was irregular.

15 DR. GOUGH: If they would have conveyed that to me, then
16 I would not have done that. I thought I was doing --

17 CHAIRMAN ROBERTI: Again, tell me why you did it?

18 I'm sorry; I don't want to grill you.

19 DR. GOUGH: That's all right.

20 The reason that I did it was because he had come to my
21 office to complain about the treatment that he had undergone
22 during his first examination. And I was trying to ensure, number
23 one, that he was qualified; number two, that he was treated
24 fairly.

25 CHAIRMAN ROBERTI: And to the best of your knowledge,
26 you were never informed by -- I'm getting all these names mixed
27 up here.

1 DR. GOUGH: Mark Grimm.

2 CHAIRMAN ROBERTI: Yes.

3 DR. GOUGH: The Program Manager.

4 I never spoke with Mark Grimm about that.

5 CHAIRMAN ROBERTI: That that procedure was irregular?

6 DR. GOUGH: That's correct, and it isn't irregular. It
7 is not irregular for me to examine applicants. I do that.

8 CHAIRMAN ROBERTI: We're going to have to break for five
9 mines, then start up again.

10 (Thereupon a brief recess was taken.)

11 CHAIRMAN ROBERTI: We have one other witness who has
12 indicated he would like to testify, Chieu Pham.

13 Mr. Pham, will you restate your name, and also who you
14 are speaking for if someone other than yourself.

15 MR. PHAM: Thank you, Mr. Chairman.

16 Again, my name is Chieu Pham. I'm with the Vietnamese
17 Fishermen's Association of America.

18 I would to thank all the Committee Members for the
19 opportunity. I know this is rather unusual, but I feel compelled
20 that I have to make this statement, being a new American.

21 I do feel that qualification is one of the very
22 important criteria in an appointment, but also sensitivity also
23 plays a very important role. And for a person to be allowed to
24 represent the State of this county, to make that kind of
25 statement regarding the Vietnamese people who have left the
26 country for everything in trust of what they were promised by
27 this country is a very understatement.
28

1 Therefore, I feel that I have to express my
2 disappointment toward the statement made by Dr. Gough.

3 That's all I have to say. Thank you.

4 CHAIRMAN ROBERTI: Thank you, Mr. Pham. We appreciate
5 that.

6 The next witness is Dr. John Tsao, who is here in
7 support.

8 DR. TSAO: Thank you, Mr. Chairman. My name is Dr. John
9 M. Tsao. I am an endocrinologist practicing in Torrance.

10 I've been on the Board for four years. The last two
11 years I've been the President of the Allied Health Division.

12 I'm going to make my comments very brief, especially
13 because I have laryngitis.

14 Basically, I've known Galal now for four years, and I've
15 interacted with him both professionally and socially. And during
16 that time, I have never heard him utter a demeaning or derogatory
17 statement in terms of a prejudicial nature.

18 And when this allegation came up, I was so shocked that,
19 although I'm not on that particular division, I talked to one of
20 my closest friends whose opinion I value highly -- you probably
21 know his name, Dr. Jerry Unitan. I asked of Jerry, could this be
22 true? And he said, "Absolutely no," that he had never heard of
23 any statements that would indicate that Dr. Gough was not even-
24 handed and fair-minded.

25 Now I'm of Chinese descent, and I think I'm probably as
26 sensitized as many regarding slurs or attitudes. And I've never
27 ever had that feeling from Galal. I just feel that that's really
28 something that I just can't accept.

1 Now, I think that you have to realize that it's a very
2 hard task, what we're asked to do. Sometimes I wonder why I'm
3 doing it, because it certainly isn't for the money. But the
4 whole concept is that we're trying to do a job to protect the
5 consumer, protect the public.

6 For that, we very often have to put down restrictions
7 that many factions do not accept or feel are just. And yet, they
8 have to be done.

9 And I think that we have in Dr. Gough a man who has a
10 broad spectrum of experience. He now has -- he has had the
11 capability, as far as I've seen him work, to get the broad
12 picture. And I feel that really to not reconfirm Galal would be
13 depriving the Board of a very valuable asset. It would be very
14 detrimental to the Board.

15 I'm ready to answer any questions you might have.

16 CHAIRMAN ROBERTI: Any questions of Dr. Tsao?

17 Thank you very much, Doctor.

18 Are there any other witnesses in the audience? Please
19 come forward.

20 MR. LARSEN: Mr. Chairman, Members of the Committee, I'm
21 Gary Larsen. I'm here representing myself.

22 I've known Dr. Gough for about ten years. My wife has
23 known his family for over thirty.

24 Dr. Gough was raised by a minister, a Protestant or
25 Presbyterian faith. He grew up, put himself through school. He
26 is not a privileged -- of privileged background. He's worked
27 hard for everything he's received.
28

1 And I can tell you that his moral and ethical character
2 is beyond reproach.

3 Thank you very much.

4 CHAIRMAN ROBERTI: Very nice to hear from you.

5 Dr. Gough, you may conclude, but I think Senator
6 Campbell wants to speak.

7 SENATOR CAMPBELL: Thank you, Mr. Chairman and Members.
8 I appreciate the courtesies extended to me today and to Dr.
9 Gough.

10 I want to clarify, I think, a couple of points.

11 First of all, let me make comment to the deposition in
12 which Dr. Gough allegedly said he didn't remember.

13 I serve on the -- I served, let me put that in the past
14 tense -- on the Los Angeles Memorial Colosseum Commission, and I
15 was deposed by the National Basketball Association for about six
16 hours. I can't begin to tell you the number of times I said I
17 don't remember because I didn't. And it's not something that's
18 uncommon.

19 The second thing, secret meetings that the Board would
20 have. Let me clarify that; that's executive session. The Board
21 is not allowed to review a licensee's application in public.
22 That has to be done in executive session. So when they said they
23 met in private, what they did was, they sat in executive session
24 because you're not allowed -- we prohibit them from doing this in
25 public. So I think that clarifies what had happened.

26 If the Board and Dr. Gough did anything, they erred on
27 the side of caution. As I said, I'm one who is very supportive
28

1 of foreign medical graduates. I'm very supportive of the
2 Vietnamese foreign medical graduates.

3 And I think what Dr. Gough has done has been very
4 carefully attempting to preserve and protect the public of the
5 State of California.

6 We changed the law, and we reinstituted a different
7 process that he now abides by as a member of the Board. And I
8 think that's doing a lot to clarify the problem with the
9 Vietnamese.

10 I think the second thing, the other thing that I'd like
11 to add, I think the concern that the letter generated was that
12 the curriculum, there was time taken from the curriculum that
13 should have been to medical studies after the fall of Saigon that
14 was going to indoctrination. And what kind of an impact did that
15 have?

16 We're dealing now with the people who were there, who
17 were in training prior to the fall, but before --

18 CHAIRMAN ROBERTI: Before the standards or admissions
19 were changed.

20 SENATOR CAMPBELL: Where it was 100 percent who had to
21 be members of the Communist Party to get in. But I think that's
22 the kind of window that we're looking at and that we're dealing
23 with in this particular regard.

24 Once again, I can just say I have a great deal of
25 personal respect and admiration for Dr. Gough. As I said, he is
26 not only a constituent and a physician in my area, but he's a
27 personal friend.

1 And I believe that he wants to be as fair and as
2 honorable as possible in carrying out his responsibilities on
3 this Board.

4 I believe he's done a good job. If there's one thing
5 that came out here today that maybe the Board, not just
6 Dr. Gough, should have done, is, when they did go into a
7 situation where they devoted all their resources to the Caribbean
8 and put the Vietnamese situation, applications, on the back
9 burner. They should have explained that more carefully than it
10 was explained. And I think that may have been a mistake, but not
11 just of Dr. Gough. That's the whole Board that may have made
12 that mistake, if that's the way it happened. But that's the way
13 it's perceived to have happened in the Vietnamese community, and
14 that's unfortunate.

15 I think we now have an opportunity and now we're moving,
16 and most of the people who were concerned, now their applications
17 are being process. Two of them have already been licensed. Many
18 more of them, in my judgment, will be licensed.

19 But let me say this, if they have gone through school,
20 and if they have qualified, and if they've made an effort to get
21 out, I mean, they got out of Saigon or if they got out of Vietnam
22 and are over here, I think that's an indication, number one, of
23 their desire to live in a free society, but also a desire to be
24 able to practice their profession.

25 I think Dr. Gough feels that way. I know I feel that
26 way and would hope that the Board's actions in the future will,
27 maybe as a result of this hearing, will be a little more
28

1 sensitive to the image, the perception, that the Board is giving,
2 and that the Board should be perceived as trying to be helpful
3 and also, at the same time, protecting the public. I think maybe
4 that's one of the good things that's come out of the meeting
5 today.

6 He's a man who deserves our support. I would urge an
7 aye vote on his confirmation.

8 CHAIRMAN ROBERTI: Thank you, Senator.

9 I think you've stated my feelings on the matter very
10 well, so I'm not going to restate them. It's a perception that
11 the Board has with a lot of applicants.

12 I was concerned about the Board's actions before the
13 passage of Senator Royce's bill, but that was matter, I guess, of
14 differing interpretations. Since the bill passed, I haven't
15 heard any testimony that the Board has done anything but try to
16 implement its intent.

17 Is there any other discussion or debate? Is there a
18 motion?

19 SENATOR CRAVEN: Move the confirmation.

20 CHAIRMAN ROBERTI: Senator Craven moves confirmation.
21 Any discussion on the motion?

22 Secretary will call the roll.

23 SECRETARY WEBB: Senator Ellis.

24 SENATOR ELLIS: Aye.

25 SECRETARY WEBB: Senator Mello.

26 SENATOR MELLO: No.

27 SECRETARY WEBB: Senator Petris. Senator Craven.
28

1 SENATOR CRAVEN: Aye.

2 SECRETARY WEBB: Senator Roberti.

3 CHAIRMAN ROBERTI: Aye.

4 The vote is three to one; confirmation is recommended to
5 the Floor.

6 DR. GOUGH: Thank you.

7 SENATOR CAMPBELL: Thank you, Mr. Chairman and Members.

8 CHAIRMAN ROBERTI: Naomi Young, Member of the Fair
9 Employment and Housing Commission.

10 MS. YOUNG: Good afternoon. I'm Naomi Young.

11 CHAIRMAN ROBERTI: We'll ask you what we ask all the
12 Governor's Appointees, and that is why you feel you're qualified
13 to assume this position?

14 MS. YOUNG: Thank you.

15 I'm pleased to be able to comment upon my qualifications
16 this afternoon, and first I'd like to address my professional
17 qualifications.

18 I have been a member of the California Bar since
19 November, 1974, and my near 14 years of practice has been
20 entirely in the areas of labor and employment law.

21 After law school, I was an attorney with the National
22 Labor Relations Board, during which time I investigated and
23 litigated unfair labor practice cases, conducted elections for
24 employees to determine whether they wished to be represented by a
25 labor organization, and conducted hearings concerning those
26 elections.

1 Since January, 1976, I have been represented private and
2 public sector employers in various aspects of labor and
3 employment matters, including those arising under the California
4 Fair Employment and Housing Act and similar federal statutes.

5 In terms of my professional activities, I have been very
6 involved throughout my career in many organizations whose goals
7 have been, among others, to eliminate discrimination and increase
8 the opportunities for women and minorities in the legal
9 profession. Just by way of example, I am a founding member of
10 the California Association of Black Lawyers and was its first
11 Vice President from the Northern California area. I am a
12 founding member of the coalition of 100 Black women in Los
13 Angeles. I was a member of the Board of Governors of California
14 Women Lawyers. I am a founding member of the Black Women Lawyers
15 Association of Northern California and was its first President,
16 and I am presently a member of the Black Women Lawyers
17 Association of Southern California. I have also served on the
18 Board of Directors of the Legal Aid Society of San Francisco.

19 I have also been active in the State Bar discipline
20 system. I first served as a referee in the Hearing Department of
21 the State Bar Court, and then as a Review Department referee.

22 Through my practice, I have an understanding of the law
23 which the Commission is called upon to apply. As a management
24 lawyer, I have an understanding and insight into what the
25 concerns of employers are. As a Black woman, I have been
26 discriminated against, both in housing and employment, and I have
27 suffered with many friends and colleagues who have had careers
28 and opportunities denied to them because they are Black.

1 So in my experience there is very little that is more
2 important than the protection of civil rights, particularly as it
3 relates to equal access to housing and employment, which are very
4 fundamental necessities of life.

5 In my opinion, I bring a unique combination of talents
6 and experiences which I hope will benefit the work of the
7 Commission.

8 And lastly, I strongly believe in the importance of
9 performing public service and giving something substantial back
10 to the community in which you live. It's a rare opportunity in
11 one's life to find a way to do that which taps directly into your
12 expertise, as well as in something you feel so strongly about.
13 And the Commission represents that Opportunity for me.

14 I hope that you see fit to confirm my appointment and
15 allow me this unique opportunity to serve.

16 Thank you.

17 CHAIRMAN ROBERTI: Thank you very much, Ms. Young.

18 Are there any questions? Senator Mello.

19 SENATOR MELLO: Yes, Mr. Chairman.

20 I'd like to ask you to comment on some of the letters of
21 opposition that we have in our record against you here.

22 You've been handed a copy of the letters; have you not?

23 MS. YOUNG: I have a copy of one letter, yes.

24 SENATOR MELLO: This one here is from the Sacramento
25 Central Labor Council, AFL-CIO, Wayne Harbolt. It indicated
26 you're an attorney with the firm of Littler, Mendelson, Fastiff
27 and Tichy. Quote:
28

1 "Organized labor at both the State
2 and national level consider this
3 firm near the top as the most anti-
4 union/anti-worker law firm in the
5 nation. We are concerned any person
6 who had direct relationship with
7 this infamous firm would be suspect
8 regarding any decisions confronting
9 them which deal with employment or
10 housing. For this reason we urge
11 a nonconfirmation."

12 A second one by SEIU, also AFL-CIO, Ruth Holbrook:

13 "Ms. Young has been associated with
14 the law firm of Littler, Mendelson,
15 Fastiff and Tichy. This law firm is
16 notorious with respect to fighting
17 against every issue surrounding
18 workers' rights and civil rights.
19 This law firm has established it-
20 self as an advocate for those who
21 would prevent working people from
22 seeking any redress for their
23 grievances."

24 When you came walking up here, I said that you seem like
25 the dream candidate to participate in Fair Employment and
26 Housing, as you probably would be an advocate for those who are
27 seeking to gain some rights and avoid discrimination.
28

1 I was somewhat surprised at their comments, but I'd like
2 to hear your comments to these two letters.

3 MS. YOUNG: Well, unfortunately, from time to time
4 former members of the Littler firm are painted with a broad
5 brush, and it is assumed that the reputation of the firm in the
6 labor community attaches to each individual who has worked there.

7 I was at the firm not only as an associate but as a
8 partner for 9½ years. And my feeling about these letters is that
9 their generalization that I'm not fair-minded, that I'm not
10 committed to civil rights, or otherwise not qualified to serve,
11 is the same type of offensive stereotype that attaches when you
12 say that someone who's Black is not qualified, or someone who's a
13 woman is not qualified.

14 My reputation -- and as you note in those letters, they
15 do not address me personally; they address the firm -- my
16 reputation in both the labor and management legal community is
17 that I am a person who is fair, who is well-balanced, and who has
18 personal integrity.

19 I must say that the greatest part of my work is
20 assisting employers in how to comply with the law. And when that
21 cannot be resolved, or where there are issues that cannot be
22 resolved, of course, I'm called upon to litigate issues on behalf
23 of my clients.

24 SENATOR MELLO: Let me ask you a question about your own
25 participation.

26 It's true, they did state that the firm and not
27 yourself, but did you, as a member of that firm or a partner,
28

1 participate in representing -- even though I know attorneys get
2 paid for representing clients when they don't have to agree with
3 the client's position; it's part of their job -- but I want to
4 know philosophically, have you represented any clients that would
5 work against civil rights or the rights of workers?

6 MS. YOUNG: I cannot say that I have. I can only say
7 what issues my clients have presented to me in terms of things in
8 which they have sought my counsel. And in those, in many cases,
9 they have been situations where they wanted to be counseled on
10 how to comply with the law.

11 I've never had somebody come into my office and say,
12 "Help me figure out how to break the law or discriminate against
13 somebody." Quite frankly, I would find that personally
14 offensive.

15 SENATOR MELLO: Were most of your clients corporate-
16 type clients?

17 MS. YOUNG: Yes, yes. And my practice now, I'm no
18 longer with Littler and Mendelson, and have my own law firm which
19 has been in existence since 1985. And we continue to represent
20 management in labor and employment law.

21 I represent many large, large corporations who have
22 policies and procedures to guard against discrimination. I am
23 often called upon to do training of supervisors so that they are
24 aware of what the law is and how to comply with it.

25 And in my work, I work with Blacks; I work with women; I
26 work with other minorities who have been to break through
27 discrimination barriers and hold positions in the corporate world
28 that have traditionally been the province of White males.

1 So, there are a lot of us out there who are working in
2 the corporate setting, who are working for management. And that
3 does not at all mean that we are disposed to discrimination or
4 not ourselves committed to civil rights.

5 SENATOR MELLO: Would you turn down representing a
6 client if you felt that they were asking you to represent their
7 point of view which was philosophically against their workers and
8 against your own philosophical point of view?

9 MS. YOUNG: I don't know. I've never been faced with
10 that question.

11 I have the latitude in my own firm to turn down clients,
12 and I have, people that I simply did not want to represent. I've
13 never turned down a client because they have come to me because
14 they have discriminated against someone and they want me to help
15 them discrimination against someone.

16 If faced with that particular issue, I'd have to decide
17 it at that point. But I'm not loathe to turning down business
18 from clients whom I don't want to represent. And I'm not loathe
19 to the idea, although I have not had to face it, the idea of not
20 representing people who are opposed to what I believe is the
21 appropriate thing to do.

22 SENATOR MELLO: Thank you.

23 CHAIRMAN ROBERTI: Any further questions? Senator
24 Petris.

25 SENATOR PETRIS: I you probably understand the reason
26 for Senator Mello's line of questioning. Some of it I was going
27 to do.
28

1 I personally, and I don't think Senator Mello does
2 either, don't apply that label to you. But it's common knowledge
3 among people who have some dealings with labor relations and
4 labor management that this firm is known as a firm that is not
5 only anti-labor in its clientele, but it's actively established
6 designs on how to keep a union out or how to break a union that's
7 in there.

8 That's not illegal. An employer, if he can get away
9 without having a union, why not? I can understand that.

10 But every time we see that name, the red flag goes up,
11 you see.

12 I wanted to ask you about a couple of things relating to
13 the Commission. One is, I want to thank you as a member of the
14 Commission which voted 7-0 in support of my bill on punitive
15 damages.

16 I guess there was a weakness in the law there; wasn't
17 there? The Supreme Court said that you can't impose punitive
18 damages because it's not in the statute.

19 MS. YOUNG: That's correct.

20 SENATOR PETRIS: And you agreed with that decision?

21 MS. YOUNG: Yes, I did.

22 SENATOR PETRIS: I haven't read the decision. Chances
23 are I would agree with it, too. That's why I'm carrying the bill
24 to plug up the defect that the Court put its finger on.

25 But at the present time, you personally do support that
26 as a policy, and that's why you voted as one of the seven. As I
27 recall, it was a 7-0 decision supporting the bill.

1 MS. YOUNG: That is correct, and may I say two things.
2 The Commission has not voted to support any particular
3 bill per se. We --

4 SENATOR PETRIS: The concept?

5 MS. YOUNG: We are voting to support the concept of
6 obtaining the authority to award punitive damages.

7 SENATOR PETRIS: Well, that's probably very wise because
8 we're known to change wordings of bills, and sometimes the father
9 doesn't recognize his own child in the final draft.

10 MS. YOUNG: And in referring to your earlier remark, I,
11 from a legal standpoint, do believe that the Supreme Court's
12 decision in Dyna-Med, that the statute as it's presently written
13 does not provide a basis for awarding punitive damages, but that
14 has nothing to do with my personal belief that the Commission
15 ought to have that kind of authority.

16 SENATOR PETRIS: Now, you've been on how long?

17 MS. YOUNG: Since December.

18 SENATOR PETRIS: What do you see as the leading issues
19 and problems that need to be addressed by your Commission based
20 on the flow of cases and things that come before you?

21 MS. YOUNG: Time is a big problem in terms of handling
22 our cases. It doesn't just affect the Commission; it also
23 affects the Department.

24 The administrative process is designed to be more
25 expeditious for people with problems. And unfortunately, I don't
26 think it moves as fast as it should. People who are out of a job
27 because of discrimination, or who are otherwise being penalized,
28 need a quick remedy.

1 SENATOR PETRIS: How can that be corrected?

2 MS. YOUNG: I'm hopefully -- it may be that the
3 Department needs more resources, and that's separate from the
4 Commission; that the Department needs more resources so that
5 investigations can take place on a quicker scale, so that cases
6 can be brought before the administrative law judges for hearing
7 and then gotten to us a lot quicker for decision.

8 SENATOR PETRIS: That's a point that needs to be
9 emphasized also, the separation. Some people still have the
10 impression that everything's under one roof; whereas, there's a
11 separation between the Department, that does the interviewing,
12 and conducting the trials, and everything else, and you're more
13 like an appellate court.

14 MS. YOUNG: That's correct.

15 SENATOR PETRIS: When say resources, I guess you mean
16 capacity to hire more people, bigger budget maybe?

17 MS. YOUNG: I have not personally undertaken a review in
18 the Department to see what the problem is, but as a practitioner,
19 separate and apart from my role on the Commission, I have had
20 many years of contact with the Department itself and do know
21 about the problems and the delays in processing those cases. I
22 know the Department is working very, very hard to eliminate that.

23 Those delays affect both the employees as well as the
24 management side, so whether it's resources or more personnel,
25 it's certainly something that needs to be further addressed, I
26 think.

1 SENATOR PETRIS: How about the problem of discrimination
2 against families with children in the housing part of the agency?
3 There seems to be a sharp increase in the last couple of years in
4 the number of problems represented by actual cases filed.

5 MS. YOUNG: As a matter of fact, the last two Commission
6 meetings, or within the last few months, we've had one open forum
7 in San Jose where that was raised as a particularly bad problem.

8 The Commission, however, as you say, it's more of a
9 judicial body. It's not an enforcement agency. And we have to
10 rely upon the enforcement agency, which is the Department, to
11 bring those cases to us so that we can make decisions and make
12 precedential decisions that people can follow.

13 What we try to do, from what I've seen during my limited
14 time on the Commission, is to have open forums where those issues
15 can be addressed and brought out in the open, and brought to
16 people's attention so that people are aware of the problem, and
17 also aware of the resources of the Department in processing those
18 kinds of cases.

19 SENATOR PETRIS: The Department has a public education
20 program -- limited, very limited -- but they try to inform people
21 who are affected by this about the law, especially the owners.

22 The Commission's duty doesn't include that. That
23 wouldn't be within the scope of your --

24 MS. YOUNG: It's my understanding that all we can do in
25 that area is to have these open forums and allow people to
26 address the Commission in open session, where a lot of those
27 facts are brought out to the public who attend.

28

1 SENATOR PETRIS: How often are those held?

2 MS. YOUNG: We've had one specific open forum, and we
3 have another one coming up, but we also have on our calendar
4 regularly the opportunity for people to come and address the
5 Commission, even if it's not a specific open forum, to address
6 the Commission on specific issues.

7 So, at any time people can get on the calendar and make
8 comment at public session.

9 SENATOR PETRIS: Now, when the Commission takes a
10 position on a concept of a bill, is that communicated to the
11 Governor?

12 MS. YOUNG: I believe that all of the correspondence
13 that went out to the various Senators and Assemblypeople with
14 respect to their bills were carbon copied to the Governor's
15 Office.

16 SENATOR PETRIS: Would there be anything separate from
17 that, a letter from the Commission to the Governor, saying:
18 "Governor, this is our position on these bills; yes on this bill,
19 no on that?"

20 MS. YOUNG: I'm not aware that there's any separate
21 letter of that nature.

22 SENATOR PETRIS: Is there any other kind of
23 communication?

24 I guess what I'm trying to find out is, does the
25 Commission see it as part of its duty to help the Governor by
26 advising him on matters that are within your jurisdiction?
27
28

1 MS. YOUNG: I think -- well, I can't speak for the other
2 Commissioners. I can only speak for myself.

3 And I think that the Governor has chosen us, hopefully,
4 because he has some reliance upon our expertise and our willing
5 to be knowledgeable and committed to this area.

6 And yes, I think we need to communicate and do
7 communicate with the Governor's Office what our positions are on
8 these bills, and why we have taken such positions.

9 SENATOR PETRIS: Do you have access to him for that
10 reason?

11 MS. YOUNG: I have never personally had access to the
12 Governor.

13 SENATOR PETRIS: Do you want to try with this one?

14 MS. YOUNG: I'd be happy to talk to anybody at any time
15 as to why I think some bill should passed to allow us to award
16 punitive damages.

17 SENATOR PETRIS: Okay, thanks very much.

18 CHAIRMAN ROBERTI: Any other questions of Ms. Young?

19 SENATOR CRAVEN: Move Ms. Young.

20 CHAIRMAN ROBERTI: Senator Craven moves confirmation of
21 Naomi Young to the Fair Employment and Housing Commission.

22 Is there any opposition in the audience?

23 Secretary will call the roll.

24 SECRETARY WEBB: Senator Ellis.

25 SENATOR ELLIS: Aye.

26 SECRETARY WEBB: Senator Mello.

27 SENATOR MELLO: Aye.
28

1 SECRETARY WEBB: Senator Petris.

2 SENATOR PETRIS: Aye.

3 SECRETARY WEBB: Senator Craven.

4 SENATOR CRAVEN: Aye.

5 SECRETARY WEBB: Senator Roberti.

6 CHAIRMAN ROBERTI: Aye.

7 The vote is five to nothing; confirmation is recommended
8 to the Floor.

9 MS. YOUNG: Thank you very much.

10 CHAIRMAN ROBERTI: Congratulations.

11 (Thereupon this portion of the
12 Senate Rules Committee hearing
13 was terminated at approximately
14 4:25 P.M.)

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26 Reported by:

27 Evelyn Mizak
28 Shorthand Reporter

APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR JIM ELLIS

SENATOR HENRY MELLO

MEMBERS ABSENT

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

CHARLES R. IMBRECHT, Chairman

State Energy Resources, Conservation and Development Commission

SENATOR HERSCHEL ROSENTHAL, Chairman

Senate Committee on Energy and Public Utilities

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: Charles R. Imbrecht, Member of the State Energy Resources, Conservation and Development Commission.

It's good to have you with us again, Assemblyman, and we will ask you why you feel you're qualified to retain this position. That's what we ask all the Appointees.

MR. IMBRECHT: Thank you, Mr. Chairman and Members.

It has been a great privilege for me to serve in this position for the past five years. I am proud of what our Commission has been able to accomplish, and I'm particularly proud as well of the quality of our staff at the Commission.

I think it is fair to say that California is uniformly recognized today as having the preeminent energy policy, not just in the nation, which is certainly true, but in many respects throughout the world. I think that is a reflection of the strong bipartisan cooperation that we've had.

I want to stress that I fully recognize that the Commission is an independent regulatory agency, and as such, essentially draws its powers from a combination of executive, legislative and judicial branches. I believe we have a very strong cooperative working relationship with the Chairpersons of the respective legislative committees who have jurisdiction over us.

I would just like to note that I am particularly proud of the fact that while I think today you no longer see interested parties seeking redress and recourse of Commission decisions

1 before the Legislature, we also at the same time have enjoyed
2 consistently the highest rankings, or either first or second, in
3 all of the various report cards that have been published in terms
4 of our respect for protection of the environment, which is one of
5 the key charges of the Commission.

6 The last two years, the Fund for Environment in
7 Washington, D.C., which has made six annual awards for States in
8 terms of policy, both years have declared California as the best
9 energy policy in the entire United States.

10 We have established a wide variety of new programs in
11 cooperation with the Legislature and the executive branch: the
12 only generic research and development program conducted by any
13 State in the country in terms of energy research; a unique effort
14 to assist our indigenous energy companies to export their product
15 abroad.

16 We also have been very proud of our efforts: to develop
17 clean fuels for improved air quality as well as energy security;
18 record settlements with project developers to produce conservancy
19 lands for protection of endangered species. We've led the effort
20 to establish national appliance standards to ensure that we
21 conserve and use our energy as efficiently as possible.

22 There are a wide range of other things I can cite. I
23 would only say that, obviously, not everything is perfect. There
24 are some items that we still have ahead of us in terms of an
25 agenda for the future, and not the least of which is our
26 continuing effort to ensure that California be equitably treated
27 by federal power marketing authorities, particularly the
28

1 Bonneville Power Administration in the Pacific Northwest. I am
2 sure that many of you are aware that we have been pursuing an
3 effort to construct a third inter-tie to the Pacific Northwest,
4 and that effort goes on unabated, but I might say at the same
5 time that it has been a much longer and more difficult process
6 that I had understood to be the case at the outset.

7 In any case, I would be honored to enjoy your continued
8 support in this position and continue to work with the Members of
9 the Legislature in ensuring that California retains its position
10 as the preeminent energy State in the country.

11 CHAIRMAN ROBERTI: Thank you very much, Mr. Imbrecht.

12 Are there any questions?

13 I guess the most controversial thing as far as affecting
14 my area this year regarding energy was the cold weather and
15 inadequate reserves combining to cause an estimated possibility
16 of cutoffs of gas, but the big problem was the rate increases
17 over and above what our threshold is.

18 I'm told that a combination of legislation and the
19 Energy Commission forces us to rely on spot markets in those
20 situations.

21 Am I right, or do I have it --

22 MR. IMBRECHT: I think you have mistaken us for our --
23 for the other regulatory agency that has jurisdiction over these
24 issues, namely the Public Utilities Commission.

25 Frankly, that has been one of the observations that have
26 been made. The Energy Commission actually initiated the first
27 investigatory oversight relative to the curtailment that took
28

1 place in Southern California. I think it is fair to say that we
2 don't share the same perspective as some of those in the industry
3 as to what occurred.

4 One of the things that we have questioned quite
5 candidly, and there'll be further debate on this issue, is
6 whether or not it continues to be responsible to plan essentially
7 for periodic curtailment of natural gas in California. We have a
8 planning horizon on the electricity side to ensure 99 percent
9 reliability, so that essentially our citizens can be assured
10 that, but for extraordinary circumstances, the lights will go on
11 when they flip the switch.

12 Yet, we've had three curtailments on the natural gas
13 side in the past decade alone. That dates back to a policy that
14 was first enunciated during the War years for reasons that, I
15 think, were more understandable at that point in time,
16 particularly in light of the fact that we had curtailment, the
17 net result was forcing major industries and the electric
18 utilities in Southern California to use fuel oil instead of
19 natural gas. In light of the severe air quality problems in
20 Southern California, I personally feel that we have to
21 fundamentally reevaluate the planning criteria.

22 What occurred this past year is subject to some dispute,
23 but the bottom line, in my judgment, is the underground storage
24 reserves were not filled, largely because there was an effort to
25 play the spot market, and there were some regulatory policies on
26 the rate side that did, I think, encourage the Southern
27 California Gas Company to pursue that course of action. At the
28

1 same time, we did have a record heat wave in the fall, and that
2 contributed as well.

3 But all of those things are not extraordinary events.
4 And I believe personally that they could have been avoided, and
5 hopefully in the future, that will be the case.

6 I would just note for you that we anticipate publishing
7 a report within the next few days that is a culmination of our
8 own evaluation of the curtailment situation, and that will be the
9 foundation for our testimony before the Public Utilities
10 Commission when they hold similar oversight hearings coming up in
11 the next couple of weeks.

12 CHAIRMAN ROBERTI: Very good.

13 One other point I want to ask you about, and I think I'd
14 be remiss in not raising it. One of the controversies that has
15 come up that has occurred during your tenure as head of the
16 Energy Commission has been a series of articles in the
17 Sacramento Bee, and I guess elsewhere, indicating that there was
18 an agreement at China Lake Naval Weapons Station which, to
19 paraphrase the articles that I'd like you to address, the
20 Commission appointed a committee of two Commissioners -- yourself
21 and Mr. Bilas -- to negotiate the question of construction of
22 geothermal plants at China Lake.

23 An agreement was reached, and in a series of articles
24 the siting decision was questioned because of the reputed close
25 ties between the proponents of the project and the Governor. The
26 Commission's response has been that the agreement between the
27 Energy Company, the project proponent, and the Commission saved
28

1 the cost of legal action, if I have your position correctly, and
2 will help in establishing an important precedent, that the State
3 has regulatory jurisdiction over projects on federal property.

4 There have been questions, however, of impropriety on
5 the part of the Energy Commission, which I don't necessarily
6 hold, but I want you to address them regarding your role in
7 negotiating the agreement between the project proponent and the
8 Energy Commission.

9 First, because they were, apparently, the product of
10 closed-door negotiations, we're wondering were outside parties,
11 other than the eventual contractors, ever consulted?

12 And the second point is that the Navy apparently never
13 signed the agreement, on the private developer and the
14 Commission, although the Navy certainly is a party to it. So, if
15 we are setting precedent of State jurisdiction over federal
16 territory, is that answer really a correct one if the Navy really
17 never signed the agreement? And how many other parties were
18 brought in so we can say that this was something that was
19 actually open to the public; it was not a closed-door, between
20 friends, kind of arrangement.

21 MR. IMBRECHT: I understand.

22 First off, let me say that I think you did correctly
23 summarize our own perspective about the situation.

24 I'd begin by saying that it represented without a doubt
25 one of the most difficult and long negotiations that has occurred
26 at the Commission. The Navy and the Department of Defense took a
27 very, very strong adversarial position vis-a-vis our assertion of
28

1 jurisdiction with respect to those projects, including
2 correspondence from the Secretary of the Navy, and ultimately the
3 Undersecretary of Defense strongly reiterating their position.

4 From the outset, I know that I can say this without any
5 fear of contradiction, I was the Commissioner, particularly as
6 the member who sits as the attorney member of the Commission,
7 that strongly argued that we had to pursue our jurisdiction.

8 Nonetheless, as a consequence of advice that was given
9 to us by our general counsel, it became apparent that the Navy
10 did, in fact, despite the fact there was no expressed preemption
11 of State jurisdiction, have a strong argument relative to the
12 Supremacy Clause in the United States Constitution.

13 In the context of our negotiations with the Navy, our
14 counsel advised us that they would prefer that we only release
15 internal legal memoranda that reiterated the strengths of our
16 position rather than the weaknesses of our position. And in
17 retrospect, that conveyed a misperception to some people that our
18 position was totally solid relative to pursuing ultimate
19 litigation in federal court, which would ultimately have
20 jurisdiction.

21 The negotiations that occurred with the developer, the
22 independent qualifying facility that had the contract with
23 Southern California Edison, in fact does establish a precedent.
24 We have no direct jurisdiction over the Navy. We have
25 jurisdiction over those developers and, in fact, have a
26 contractual privy relationship with the utilities that we have
27 the regulatory nexus with.
28

1 If there is any single item in my five years at the
2 Commission that I could cite and would freely acknowledge was a
3 mistake, it is that I did not personally review sufficiently a
4 press release that was distributed describing the proposed
5 settlement. And I might stress as well that nothing can be
6 negotiated in private without a full public hearing of the
7 Commission and ultimate acquiescence by a majority of the
8 Commission. Moreover, all of the meetings that took place
9 included representation of our staff, which acts as an
10 independent party in our proceedings, contrary to one of the
11 representations carried in the two articles.

12 Actually I can take a little issues with a "series" of
13 articles. There were just two that were published by one
14 correspondent, a correspondent of note here in Sacramento.

15 I can also add that categorically, that there was never
16 a single discussion with anyone in the Governor's Office. As I
17 indicated to the reporter when he questioned me, I said I can
18 assure you, you can call somebody in the Governor's Office, and
19 nobody will have even heard of the Coso geothermal projects.

20 The first that they were ever notified was after it was
21 apparent that there was interest in running the story, however
22 inaccurate it was. And I notified them that there might be
23 publication of the story.

24 I would just note for you by comparison, another
25 reporter also chose not to pursue the story after checking the
26 representations I made.

27

28

1 Frankly, what we were also faced with was the prospect
2 of litigation that was likely going to take at least two years to
3 conclude at substantial expense, and at the same time, holding in
4 abeyance a whole wide range of other issues, some of which affect
5 Senator Craven's and Senator Ellis' community where there is a
6 great deal of concern about other efforts to develop independent
7 generation on Navy property, and thereby create what's known as
8 an economic bypass of the utility system. That in turn would
9 almost assuredly result in further rates exposure for citizens in
10 the affected territories.

11 I want to stress as well that those of us in the Energy
12 Commission have reviewed the implementation of independent
13 generation in California. While it has been very successful on
14 the one hand, there also have been many mistakes that have
15 occurred since 1982, in particular the failure of the pricing
16 structure to reflect changes in the energy marketplace. The net
17 result is that we have been, I believe, on the front edge of the
18 point of noting ratepayer exposure and the problems associated
19 with that entire development process.

20 In any case, I would simply reiterate that I am
21 absolutely confident that the agreement that was negotiated
22 protects in every respect our responsibilities to ensure
23 compliance with the California Environmental Quality Act, and
24 more over, ensures that the Navy and the Department of Defense is
25 clearly on record in the future that we will aggressively assert
26 the jurisdiction that the Legislature has conveyed upon the
27 Commission.
28

1 CHAIRMAN ROBERTI: Thank you very much, Mr. Imbrecht.

2 We've been joined by Senator Hersh Rosenthal, the
3 Chairman of the Senate Energy and Public Utilities Committee.

4 You have questions, Senator Rosenthal.

5 SENATOR ROSENTHAL: Yes, thank you very much for the
6 invitation to sit in.

7 First I want to say that while I have been generally
8 disappointed over the quality of some of the Governor's
9 appointments, I have found Chairman Imbrecht to be a
10 distinguished exception to that rule.

11 MR. IMBRECHT: Thank you.

12 SENATOR ROSENTHAL: I think he has brought creative
13 leadership and intellect to the Energy Commission, and has
14 maintained its stature as the nation's leading agency dealing
15 with the subject matter.

16 He's been at the Commission since 1983. Before we
17 sentence him to a second term --

18 (Laughter.)

19 SENATOR ROSENTHAL: -- I'd like to take a few moments to
20 ask him a few questions, just to get on the record some things
21 that I've been concerned with in the Committee in dealing with
22 energy issues.

23 Once again, in terms of oil shortages, we're becoming
24 overly dependent on foreign sources of oil. And since much of
25 that oil comes from an area in the Persian Gulf, another energy
26 crisis may not be as remote as many believe.

27
28

1 In the last few years, energy deregulation has swept the
2 nation, for better or for worse. It seems to me that the Energy
3 Commission is becoming more market-oriented as well, even in its
4 emergency contingency planning role.

5 Are you convinced that market forces alone are
6 sufficient in a time of crisis to allocate scarce energy in a
7 fair manner?

8 MR. IMBRECHT: No, and I would like to answer your
9 question more fully, but I think I should begin by thanking you
10 for your kind comments. I most appreciate it.

11 In any plural body, as in the Senate or the Assembly,
12 you have a variety of view points. And we in fact will be
13 revisiting the adoption of our contingency plan as required by
14 statute every five years during the course of calendar 1988. In
15 fact, we have a major exercise going on at DOE this afternoon
16 that I believe you're aware of.

17 While I know that some of my colleagues believe that the
18 market approach is appropriate, and I believe it ought to be the
19 first point of emphasis, I do think that on two specific areas it
20 is essential that the State retain, as we have in the existing
21 plan that was adopted, I might add, a year after I was appointed
22 Chairman of the Commission: the ability to allocate a relatively
23 small portion of the total petroleum supply, but to ensure that
24 we can offset any problems in terms of our economy; and
25 protection of jobs, employment, and quality of life in our state.

26 The two areas that currently are reserved, three percent
27 set aside to ensure allocation for emergency purposes: fire
28

1 protection and all of the other ways and things that go with
2 that. And I think it's quite obvious that we need to hold that
3 card in the event that there are problems in terms of going to
4 market allocations, as we experienced both in 1974 and '79.

5 We also have a three percent discretionary set aside
6 that's designed to deal with those kinds of unique economic
7 circumstances that normal market allocation isn't going to
8 provide for. One of the examples I cited from my tenure when I
9 was in the Assembly -- and while it's anecdotal, I know that
10 there were many other examples of this type throughout the State
11 -- a manufacturer in my district made forklifts. Still does, I
12 might add, and employs about 450 people. And because they did
13 not have a regular relationship with a petroleum jobber, were
14 unable to secure gasoline. They required one gallon of gasoline
15 per machine to move the machine from the assembly line to the
16 delivery truck and then to the ultimate customer. It was almost
17 a classic "but for a nail the shoe was lost; but for the shoe,
18 the horse was lost" and so forth. And as a result of the
19 inability to acquire 100 gallons of gasoline a week, they were
20 forced to shut down their manufacturing facility and lay off
21 those 400-plus workers.

22 That's the kind of circumstance that we need to have the
23 abilities to allocate for and respond to legitimate concerns of
24 Members of the Legislature and others in the public that don't
25 have the kind of ongoing market relationship to ensure that in
26 time of short supply, they in fact will have access to needed,
27 even if minimal, amounts.
28

1 The bottom line is that what we have now is what I
2 continue to think is appropriate unless I'm shown otherwise, and
3 94 percent minimum of total petroleum supplies in this State will
4 be distributed purely as a result of market forces. And that
5 relatively small share would be used for those kinds of unique
6 situations that I've just described.

7 SENATOR ROSENTHAL: The second area of concern, the
8 Commission has jurisdiction over the siting of the 50 megawatt
9 plants. For the last few years, the Commission's been struggling
10 with efforts to assert jurisdiction over multi-unit projects
11 which, when aggregated, exceed 50 megawatts.

12 In other words, if you're within a mile, it's really the
13 same manufacturer and the same developer.

14 It seems to me that one of the lessons to be learned
15 from this struggle may be that we need new legislation to clarify
16 and confirm the Commission's jurisdiction over those multi-unit
17 plants.

18 Now, I certainly would grandfather in all of those that
19 were already either on line or in the process, but it seems to me
20 that you have a proposed rule making on this issue, which has
21 been on hold for a long period. Plus, as you know, I have a bill
22 to be used as a vehicle to clarify that jurisdictional issue.

23 What do you think should be done about that?

24 MR. IMBRECHT: I'm glad you asked that question, Senator
25 Rosenthal. I think that you know for some time I've expressed
26 concerns about whether we have a level playing field, and more
27 over, it's just my opinion, but I have had many, many Members of
28

1 the Legislature, both sides of the aisle and both Houses, argue
2 very forcefully that in fact it was the intent of the Warren-
3 Alquist Act to ensure that project proponents not be able to
4 artificially split projects into inferior pieces and thereby
5 avoid jurisdiction, and appropriate environmental and public
6 convenience and necessity kinds of determinations that are
7 required by statute.

8 Both I and our legal counsel believe that we do have
9 sufficient discretion within the existing statutory framework to
10 pursue the bulk of those projects that are at issue. At the same
11 time, it would obviously be preferable if we had clear statutory
12 authorization in that regard. And yet, we are concerned that by
13 risking that in the legislative process, we potentially open
14 ourselves up to a countervailing argument from those who might
15 seek to take us to court on the issue; that in fact if the
16 legislation was pursued and it was not successful, that that is
17 an iteration of their point of view that we don't have that
18 authority.

19 I have recently spoken to members of your staff, who
20 have suggested that you would like to work with us in, perhaps,
21 trying to pull the parties together and see if we can't resolve
22 some of those differences before you move forward with the
23 legislation on that issue, and I just want to stress to you that
24 we are absolutely, as always, willing to do that. I hope that we
25 can move that process forward in the near future.

26 As to the notice of proposed rule making, while that is
27 not at the Commission -- as you know, and perhaps other Members
28

1 do not, we have ten subcommittees of Commissioners to deal with
2 individual subject matters because there's a wide range of issues
3 on our plate. That's directly under my jurisdiction, but I do
4 understand that we will be issuing the notice within the next two
5 weeks, after all of the effected parties have had it circulated
6 for comment.

7 So, I think we will have what I characterize as a target
8 on the wall for people to praise or condemn, take their shots at,
9 at least in a frame that might be useful as a preface to the
10 meetings that your staff is suggesting.

11 SENATOR ROSENTHAL: Fine.

12 Now, the third issue is concerning labor. And I'm
13 taking the subject broadly.

14 When considering whether to approve the siting of a new
15 energy facility, the Commission focuses its attention on the need
16 for the facility and the environmental impacts. And assuming
17 those factors are satisfied, the Commission has also considered
18 economic development and the labor issue.

19 In the recent proceeding referred to by Senator Roberti,
20 the Coso proceeding on Naval property, the developer promised the
21 Energy Commission that it would hire local labor, because there
22 was a large unemployment figure in the San Bernardino area, to
23 construct the project.

24 MR. IMBRECHT: In Inyo County.

25 SENATOR ROSENTHAL: In Inyo County, yes.

26 MR. IMBRECHT: A little bit farther north.
27
28

1 SENATOR ROSENTHAL: After the Commission signed a
2 stipulated agreement with the company, a Colorado firm was hired
3 to commence construction, and they brought in some people from
4 out of the State.

5 To what degree does the Warren-Alquist act allow the
6 Commission to consider labor benefits associated with a project?
7 And what can the Commission do to enforce those labor
8 commitments?

9 MR. IMBRECHT: Well, first and foremost, directly to
10 answer that particular circumstance, since that occurred, we have
11 met not only with the prime contractor, Mission Energy, which of
12 course is a subsidiary of one of the major utilities in this
13 state over which we have quite a bit of control, as well as with
14 the actual independent energy contractor, California Energy
15 Company -- we call it the other CEC.

16 Frankly, we've made it abundantly clear to them that
17 there were representations made, and we expect them to fulfill
18 those representations. And they have assured us that in fact
19 that will be the case.

20 We are monitoring the situation very carefully, and the
21 local construction building trades people have also been in close
22 contact with us on the issue.

23 I believe that there has been some recent improvement
24 relative to those issues.

25 Now in terms of our jurisdiction on labor issues, we
26 don't have anything in our statute that specifically gives us
27 authority in that regard.
28

1 However, with respect to the totality of our evaluation
2 of the need for a project, the statute asks us to balance five
3 factors: public health and safety, environmental protection,
4 system reliability, and then micro and macro economics, i.e.,
5 micro to the utility and macro in terms in benefits to the
6 totality of the State's economic growth.

7 And I think that it's particularly in that last category
8 where it is appropriate for us to consider whether in fact a
9 project will contribute to economic development, and that also
10 means, obviously, the retention of a skilled labor force in our
11 State or in a particular geographic area of our State.

12 We have created what is loosely characterized as the
13 balancing test, where if a project does not meet the last nuance
14 of a numerical test in terms of need, we do allow project
15 developers to essentially appeal to us on the basis of doing
16 above and beyond the call in each of those five categories.

17 We certainly are going to continue that as long as I
18 have anything to say about it in terms of our advocacy within our
19 agency, and we will continue to use, I think, the job owning
20 capabilities we have to do that as well.

21 If in fact representations that are made at the outset
22 of a stipulation are not fulfilled, I want to stress that that
23 project has not been licensed by the Commission. They have to go
24 through a full siting process, which is very detailed, as you
25 know, and there will be ample opportunity for any and all
26 effected and aggrieved parties to raise those concerns before the
27 Commission. And frankly, we'll see how the chips fall.

28

1 It certainly is no certainty that they're guaranteed a
2 license, irrespective of the stipulation relative to
3 jurisdiction.

4 SENATOR ROSENTHAL: Finally, regarding some
5 conversations we have had and some quotes that you've been
6 involved with concerning the Commission reorganization.

7 In a recent interview in the Golden State Report, you
8 stated that if you had your way, you would establish a Department
9 of Energy to handle nonregulatory energy functions, and that you
10 would split regulatory functions among a number of commissions,
11 including the PUC.

12 In addition, in the recent SB 1970 Report -- that's a
13 report that I asked both the PUC and the Energy Commission to
14 tell us whether or not there was a surplus of energy which had
15 been suggested by the utilities -- you recommended that a blue
16 ribbon panel should be formed to re-examine the functions and
17 structure of the State's energy programs.

18 I really believe that the energy events over the last
19 decade have overtaken the Warren-Alquist Act, and that it is
20 time, perhaps, to reassess -- I'm not suggesting we shouldn't
21 continue, but to reassess the mission of the Energy Commission.
22 In particular, I believe that issues like clean fuels, which is
23 one of the things we never even thought about when the Warren-
24 Alquist Act was coming in to play, R&D, transportation
25 management, and cost-effective conservation needs to play a
26 greater role in the State energy policy and planning.

27
28

1 We've been tinkering around the edges for the last few
2 years, but I believe, as you have indicated, that more
3 fundamental changes may be needed.

4 Would you be willing, as Chairman of the Commission, to
5 work with the Legislature on a comprehensive re-examination of
6 the Energy Commission's mandate and structure?

7 MR. IMBRECHT: Absolutely, and I want to stress that. I
8 think that I can say clearly that that is the view all the
9 members of our Commission, and I make that statement based upon
10 the following.

11 For each of the last two Biennial Reports -- as you all
12 know, we must report each two years on the totality of the
13 State's energy policy -- we have in fact recommended exactly
14 that. I want to note for you as well that in the context of the
15 1970 Report, however, they have adopted the same recommendation.

16 What I would just note for you is that this is -- and
17 I'm stating the obvious -- this is a large and complex State.
18 And we have the largest energy economy in the country by a wide
19 margin. Most people don't realize that 23 percent of our State
20 gross product comes from the energy industry, and that excludes
21 utilities. Add utilities on, and you're talking 30 percent of
22 the total State gross product, maybe a little bit more than that.
23 It's a dominant force in our economy.

24 And I personally have found this position to be
25 extremely challenging and absolutely commands my time in every
26 respect. And I believe that ultimately it makes sense for us to
27 consider a consolidated regulatory body that simply has
28

1 responsibility for the broad range of energy regulatory
2 activities -- everything from demand forecasting, to siting and
3 rate structures, and so forth, and the interrelationship between
4 municipal and investor-owned utilities, transmission access, et
5 cetera, et cetera. The list is very, very long.

6 Similarly, the Commission has other responsibilities as
7 well as a few other State executive department agencies that, I
8 think, would be more appropriate to be in a Department of Energy
9 with a director who serves at the pleasure of the Governor, and
10 not in a regulatory kind of framework.

11 This is a process that takes a lot of time, and people
12 have to move around to accepting the fact that we shouldn't have
13 structures that are static when we have a changing world.
14 Everybody gets very comfortable with the status quo sometimes in
15 government, and I think we have signaled very clearly that we are
16 willing to re-examine and work with you in that regard, and we've
17 done it for several years now.

18 I'm very happy to see that we're beginning to develop
19 some consensus, at least, that this issue is ripe for addressing.

20 And I want to note as well that when I raise these
21 questions, I don't suggest that only the Warren-Alquist Act needs
22 reassessment. I think that the underlying statutory
23 Constitutional authority of certainly our sister agency, the
24 Public Utilities Commission, as well as a number of other State
25 departmental agencies, need to be put on the table at the same
26 time.

1 SENATOR ROSENTHAL: We will be talking further about
2 that.

3 MR. IMBRECHT: It's going to be a long -- that's a long
4 effort.

5 SENATOR ROSENTHAL: I'm going to be here for a long
6 time.

7 (Laughter.)

8 MR. IMBRECHT: Good.

9 SENATOR ROSENTHAL: Mr. President, I have no further
10 questions.

11 I think that Chuck Imbrecht deserves the reappointment
12 to this position.

13 CHAIRMAN ROBERTI: Thank you.

14 SENATOR ROSENTHAL: If I were a member of the Committee,
15 I would move it.

16 CHAIRMAN ROBERTI: Thank you for the vote of confidence
17 as Chairman of the relevant committee.

18 SENATOR CRAVEN: Move confirmation to the Floor.

19 CHAIRMAN ROBERTI: Senator Craven moves Mr. Imbrecht's
20 confirmation be recommended to the Floor.

21 Is there any opposition?

22 Seeing none, the Secretary will call the roll.

23 SECRETARY WEBB: Senator Ellis.

24 SENATOR ELLIS: Aye.

25 SECRETARY WEBB: Senator Mello.

26 SENATOR MELLO: Aye.

27 SECRETARY WEBB: Senator Petris. Senator Craven.
28

1 SENATOR CRAVEN: Aye.

2 SECRETARY WEBB: Senator Roberti.

3 CHAIRMAN ROBERTI: Aye.

4 The vote is four to nothing; confirmation is recommended
5 to the Floor.

6 Congratulations. We look forward to working with you
7 for another term.

8 MR. IMBRECHT: Mr. Chairman and Members, thank you for
9 your courtesy.

10 CHAIRMAN ROBERTI: We're glad to have your family with
11 us as well.

12 MR. IMBRECHT: Thank you.

13 (Thereupon this portion of the Senate
14 Rules Committee hearing was terminated
15 at approximately 2:38 P.M.)

16 --oo0oo--
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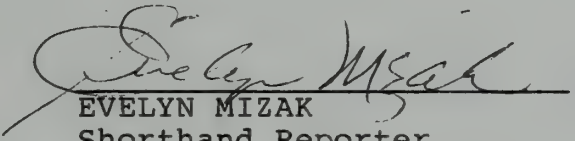
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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

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HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, MAY 25, 1988

2:22 P.M.

Reported by:

Evelyn Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR JIM ELLIS

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

LESLIE M. LISCOM, Member
California Horse Racing Board

DONNA A. LITTLE, Commissioner
Workers' Compensation Appeals Board

SUSAN CAVAZOS
California Self-Insurers' Association

ROBERTA MENDONCA COOK
California Chamber of Commerce

MERLE C. RABINE, President Elect
California Applicants' Attorneys Association

RICHARD J. CANTRELL, Chairman,
Legislative Committee
California Applicants' Attorneys Association

BARRY J. WILLIAMS, Chairman
Amicus Curiae Committee
California Applicants' Attorneys Association

AMANDA HAWES, Attorney
Santa Clara Center for Occupational Safety & Health (SCCOSH)

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: Governor's Appointees appearing today, Leslie M. Liscom, Member of the Horse Racing Board.

Mr. Liscom, we'll ask you what we ask all the Governor's Appointees, and that is why you feel you're qualified to assume this position.

MR. LISCOM: Thank you, Mr. Chairman.

I believe that I have a strong sense of integrity, and honesty and fairness in dealing with the issues before the Racing Board. I've been involved with horses all my life, and at this moment, the added element is that I've had four years of service on the Racing Board, and hopefully, I've added some experience in understanding how the Racing Board works.

CHAIRMAN ROBERTI: Thank you very much, Mr. Liscom.

Are there any questions? Senator Petris.

SENATOR PETRIS: I'm interested in the area of labor relations.

We had a bill that was hotly debated, carried by Senator Maddy, authorizing the satellite betting. And one of the issues was, well, how does that affect the employees, and will they be dealing with the already recognized unions that do the other work, the parimutual clerks and so forth?

Senator Maddy said, "Absolutely. That's the intent." The intent is that they cannot discard these prior agreements and go with somebody else instead. And he wrote a letter to that effect, and I believe that -- yes, he wrote a letter to the

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1 Attorney General reflecting this as an expression of legislative
2 intent.

3 Now, the first time the issue came up was at one of the
4 race tracks which has disagreed with this clause, and it ignored
5 it. It's just not going along with it.

6 That's contrary to the author, who, you know, is the one
7 who knows most about the bill and who made commitments to the
8 rest of the membership at the time when the issue was discussed.

9 So the question is, what's being done now with regard to
10 that one track that says, "No, we don't recognize that"? Is the
11 Board taking any interest in that? That's at Del Mar.

12 MR. LISCOM: It's my understanding that the parimutual
13 clerks essentially are union employees. The track, if there is a
14 track that is not going along with that, I think that the
15 position that we do not -- I believe they should be according to
16 the union. There is a recognized parimutual union, and it's my
17 understanding the intertrack parimutual employees would be part
18 of that union.

19 If there's a -- if it's an area of management/labor
20 dispute, I believe the Racing Board has taken the position we
21 don't formally step in to arbitrate that.

22 My personal opinion is that I believe that the
23 parimutual clerks should be and are part of the parimutual union.

24 SENATOR PETRIS: Who determines whether a particular
25 track, in this case it's one of the fairgrounds, a county fair
26 track, I guess. Who determines whether they have the right to
27 use the satellite system? Is it the individual Board? In this
28

1 case would it be the Del Mar Fair Board, or would it be the
2 statewide Board?

3 MR. LISCOM: Well, the fair board -- the satellite
4 facility applies to the Racing Board for a license for permission
5 to take the simulcast signal. And the host track applies to the
6 Racing Board to send the signal.

7 As far as the union contract, whether or not those
8 employees are subject to the union or not, I don't believe -- my
9 personal opinion is that isn't a Racing Board -- I don't think
10 the Racing Board has jurisdiction to determine that.

11 SENATOR PETRIS: Well, what questions does it determine
12 in issuing a license?

13 MR. LISCOM: It determines the qualifications, the
14 financial and the physical qualifications to comply according to
15 the Horse Racing law. There are criteria set forth under the
16 Racing law dealing primarily with the physical and financial
17 aspects of it.

18 SENATOR PETRIS: According to Senator Maddy, this union
19 thing is also one of the criteria that's not being honored.

20 Shouldn't the Board reject an application of a group
21 that is not going to honor that part of the statute?

22 MR. LISCOM: You certainly could be correct. I really
23 don't know, Senator.

24 It's my understanding that the Racing Board does not
25 pass on labor/management/union, whether someone should be in the
26 union or not.

27
28

1 I could certainly be mistaken, but that's my
2 understanding --

3 SENATOR PETRIS: Well --

4 MR. LISCOM: -- that that is not one of the issues.

5 SENATOR PETRIS: I imagine in the normal course of
6 operations, it doesn't. But where a new statute comes along, and
7 that's one of the key issues, and it's enacted with the
8 understanding and specific language that this is the way it's
9 going to go, it seems to me that Board ought to take notice of
10 that.

11 MR. LISCOM: Uh-huh.

12 SENATOR PETRIS: Don't you think?

13 MR. LISCOM: I would think so.

14 SENATOR PETRIS: It's just as important to some of the
15 people who voted for the bill as the other requirements and
16 standards that would qualify a particular local track to come
17 into the satellite program. In other words, they'd have to have
18 the physical facilities; they have to do this; they have to do
19 that, and they have to deal with the same union that was there
20 before that does the comparable work, instead of rejecting them
21 and going off in some other direction.

22 I don't think the legislation would have passed the
23 Senate if it weren't for that specific agreement. Now we find
24 that the track is not doing it, and the Board's saying, "Well,
25 that's not our problem."

26 Well, it seems to me, if you're the licensing agency, it
27 should be your problem. And if you find that they're ignoring
28

1 the law, or simply rejecting that portion of the statute, then
2 the Board ought to call it to their attention.

3 MR. LISCOM: There's no question in my mind that if
4 we're satisfied that that comes under our jurisdiction, we're
5 well prepared to deal with it.

6 The times that the question has come up, whether or not
7 we do -- are authorized to make that decision, if we're not sure,
8 we generally ask the attorney that's assigned to us from the
9 Attorney General's Office to advise us if we are authorized to
10 pass upon that. And if we are, there's no problem in our dealing
11 with that.

12 SENATOR PETRIS: I guess that's why Senator Maddy wrote
13 to the Attorney General, for that reason. Maybe they're looking
14 into it. I just thought you might have an update for us.

15 Thank you.

16 MR. LISCOM: Sure.

17 CHAIRMAN ROBERTI: Thank you very much.

18 Is there any opposition in the audience?

19 SENATOR CRAVEN: Move Mr. Liscom.

20 CHAIRMAN ROBERTI: Senator Craven moves Mr. Liscom's
21 confirmation to the Floor, do pass.

22 Secretary will call the roll.

23 SECRETARY WEBB: Senator Ellis.

24 SENATOR ELLIS: Aye.

25 SECRETARY WEBB: Senator Mello.

26 SENATOR MELLO: Aye.

27 SECRETARY WEBB: Senator Petris.
28

1 SENATOR PETRIS: Aye.

2 SECRETARY WEBB: Senator Craven.

3 SENATOR CRAVEN: Aye.

4 SECRETARY WEBB: Senator Roberti.

5 CHAIRMAN ROBERTI: Aye.

6 The vote is five to nothing; confirmation is
7 recommended.

8 MR. LISCOM: Thank you very much.

9 CHAIRMAN ROBERTI: Thank you. Congratulations.

10 The next Appointee is Donna A. Little, Commissioner on
11 the Workers' Compensation Appeals Board.

12 Ms. Little, we'll ask you what we ask all the Governor's
13 Appointees, why you feel you're qualified to assume this
14 position.

15 MS. LITTLE: I've been a practicing attorney for ten
16 years. I spent approximately half of my career as an attorney,
17 and primarily as a senior attorney, at the California Court of
18 Appeal, where I was doing the same type of work that I'm doing
19 now, same type of appellate work, except that in the Court of
20 Appeal I was covering all areas of law, including Workers'
21 Compensation, but now I'm obviously doing exclusively Workers'
22 Compensation.

23 In the ten months that I've been on the Workers'
24 Compensation Appeals Board, I've participated in over 1,200 cases
25 in which decisions have issued. And I understand that there is
26 some opposition to my confirmation on the basis that I am somehow
27 unique in my decision making.
28

1 The Board decides cases utilizing three-member panels.

2 In 97 percent of the 1200 cases I've participated in, the
3 decisions have been unanimous. And in 2.5 additional percent,
4 I've been in the majority, and that's a total of 99.5 percent of
5 the cases I've decided. And of the 1200 cases, I've dissented
6 in, I believe, 4 cases, and I think all of them are partial
7 dissents.

8 Of those 1200 cases, I have participated in only one,
9 and that's the Duke case, that's been reversed by the Court of
10 Appeal. There are over 80 additional cases in which I have
11 participated in which the Courts of Appeal issued decisions in
12 which they have either outright denied or -- I'm sorry, in which
13 they have either denied or dismissed the petition for writ on
14 appeal outright, or in which they've affirmed our decision
15 following a grant of a petition.

16 So in summary, I believe that my legal education and my
17 experience in the State's judicial system make me well-qualified
18 for this position.

19 CHAIRMAN ROBERTI: Thank you, Ms. Little.

20 Are there questions? Senator Mello, and then we'll ask
21 for opposition.

22 SENATOR MELLO: We had a chance to chat --

23 CHAIRMAN ROBERTI: We'll ask if there's formal support
24 in the audience, then opposition.

25 Senator Mello.

26 SENATOR MELLO: We had a chance to speak briefly this
27 morning, and I appreciate that opportunity.
28

1 The ongoing concern I have is, I get a tremendous amount
2 of complaints from Workers' Compensation. You're part of it, and
3 you're a spoke in the wheel, I guess. The system is just not
4 delivering through a whole series, both on the entry level and
5 the way it goes through the entire process. Your part, I guess,
6 you call it the judiciary process.

7 MS. LITTLE: Appellate judicial.

8 SENATOR MELLO: Right, and you mentioned some 1200 cases
9 where you're unanimous.

10 That reminds me of another witness that spoke about the
11 Board of Education, and their decisions were nearly unanimous.
12 But bear in mind, I believe all of the members currently serving
13 are appointees of Governor Deukmejian.

14 Is that correct?

15 MS. LITTLE: That's correct. One has served through
16 several administrations, but they all are currently Deukmejian
17 appointees.

18 SENATOR MELLO: So the point I'm making is, the fact
19 that they're unanimous doesn't mean that the decisions are in the
20 public's interest. It just means that they are addressing a
21 certain philosophical point of view that I think is handed down
22 from Governor Deukmejian, Ron Rinaldi, the Director of Industrial
23 Relations.

24 I know some of these are beyond your control, but the
25 frustration I have is that I know we're short of administrative
26 law judges to hear these cases, and we're short of support staff.
27 On your level, I don't know what the staffing statistics are, but
28

1 I've been in touch with the applicant attorneys, and they've
2 indicated their opposition to you.

3 There's been some undue delays of people getting their
4 case before the appellate body, and there are just unnecessary
5 delays on behalf of the applicants that, in some cases, are 14
6 months. I'm talking about the whole process from the beginning;
7 14 months or longer.

8 At times, I have incidents in my district where people
9 have actually had their homes foreclosed upon; they couldn't pay
10 their rents.

11 As a Member of the Rules Committee, who do we start
12 looking to for answers to these questions?

13 I know you're going to deny that this is any of your
14 responsibility. That's what I would do if I were you. But
15 somebody ought to be taking to the Honorable Governor George
16 Deukmejian and let him know that this program is a mess.

17 The only thing I've seen him do, he announced the other
18 day he wanted some legislation, and they had a near agreement
19 last year, but they had \$1 billion worth takeaways from injured
20 workers.

21 California now ranks near the highest in injuries per
22 10,000. That's the way they monitor the number of injuries. We
23 have a very poor safety record. We've eliminated Cal-OSHA. Not
24 we, but Governor Deukmejian has eliminated Cal-OSHA, and here
25 we're operating with a program that doesn't provide the degree of
26 safety to protect workers.

1 I guess you're just part of the whole system that's
2 there.

3 MS. LITTLE: Was there a question?

4 SENATOR MELLO: Yes, the question is, what role are you
5 going to play in trying to -- well, first let me ask you this.
6 Do you think the system needs changing?

7 MS. LITTLE: Well, let me say this. We did discuss some
8 of this this morning.

9 SENATOR MELLO: Yes.

10 MS. LITTLE: I will say that I'm not involved in the
11 administration of the system. As we were discussing this
12 morning, that is set forth in the Labor Code. The Labor Code
13 creates a bifurcated system where we handle the appellate
14 judicial end of the system. The administrative end of the system
15 is handled by the Administrative Director of the Division of
16 Industrial Accidents. And that includes the administration of
17 the district offices, which I think you referred to, the trial
18 judges' offices.

19 As far as the staffing that you mentioned is concerned,
20 in our particular office, in the appellate office, Appeals Board,
21 San Francisco, I don't know of any real staffing problems that we
22 have at the moment. I also don't know of any real delays people
23 have had in bringing their cases up on appeal.

24 SENATOR MELLO: Yes, on appeal. But by the time they
25 get to you, they have to be turned down on the administrative
26 level, and that's where, I guess, the big delay is taking place.

1 I mean, I could show you the facts and cases of 14
2 months and over that people have had in trying to get their case
3 heard. I think it's shocking.

4 Let me tell you another thing. The employers of the
5 State of California also complain to me. We have one of the
6 highest premiums in the whole nation.

7 So, something is wrong. I mean, the applicants are
8 unhappy; the providers are unhappy; the employers who pay the
9 premiums are unhappy. So that tells me there's something wrong
10 that has to be changed.

11 MS. LITTLE: Well, I think as a start, it would be
12 necessary for everybody to get together and start talking about
13 whatever the problems are that you might identify.

14 I'm not in a position really to evaluate what problems
15 there might be, or therefore, what solutions there might be. But
16 obviously, if there's going to be some kind of change, then there
17 needs to be some kind of dialogue.

18 And for me to make a suggestion, I would really need an
19 opportunity to sit down with the various interest groups and
20 discuss their perspectives, and I don't have that opportunity in
21 my job. And even if I did, I really don't have the right to
22 impose my personal judgments in my job. My job is to apply the
23 law as you write it, so that's where I am.

24 CHAIRMAN ROBERTI: One of the criticisms that has been
25 leveled against you -- and I'm sure the opposition will
26 articulate this -- is that in some decisions, you substitute your
27 opinion for that of the judge on matters of fact, which, I grant,
28

1 the Board can do, but which, if it operates according to normal
2 judicial procedures, ought to be done very sparingly.

3 One case that's been brought to my attention that maybe
4 you'd like to address is the Dales case. In my little short
5 synopsis here, it says:

6 "... a waitress was shot to death
7 in a Mexican restaurant across the
8 street from the Navy Base. The issue
9 was whether she was on duty at the
10 time she was shot. The judge found
11 that she was on duty, relying on the
12 testimony of three witnesses, including
13 the police officer who had investigated
14 the murder and had concluded that she
15 was on duty at the time of her death."

16 You voted to reverse, finding among other things, that:

17 "... it was very unlikely the decedent
18 would have been sitting at a table or ..."

19 I have here:

20 "... or on the lap of a customer,
21 drinking beer, if she had been working."

22 MS. LITTLE: I don't totally recall that case out of
23 1200 cases, but I do have some recollection of it.

24 Frankly, to be very honest, I'm a little reluctant to
25 discuss the specific cases, because they tend to come tack to us
26 through various other issues, but I do recall that that case had
27 a situation that I believe the issue was whether she was working
28 at the time that the shooting occurred.

1 And in response, that particular allegation was made by
2 the Applicants' Attorneys in their letter that they filed in
3 opposition to me. And I went through the cases that the
4 Applicants' Attorneys, I believe, also went through; the ones
5 where we had reversed the Workers' Compensation judge.

6 And first, I would say it's not my job to be a rubber
7 stamp of the Workers' Compensation judges, obviously, or we
8 wouldn't need the Appeals Board.

9 CHAIRMAN ROBERTI: I recognize that.

10 As they have indicated to us, however, there were three
11 witnesses. And as I'm surmising from their synopsis here, she,
12 if not working at that moment, was probably clearly in something
13 that was related to her work environment. I do not know if she
14 was on a break or whatever; it doesn't say so.

15 MS. LITTLE: Again, I don't recall the case. I really
16 would need to see it.

17 My recollection -- and this is recollecting it without
18 looking at the case again -- was that the issue is whether she's
19 working at the time. There were witnesses. I don't know if
20 anybody actually testified that she was working at the time. I
21 think that was an inference that was drawn. Although, again, I
22 really need to see the file to discuss that accurately.

23 CHAIRMAN ROBERTI: What criteria do you use as to
24 substituting your opinion for that of the judge as far as an
25 issue of fact is concerned?

26 MS. LITTLE: Well, there is a case that's called the
27 Garza case that says that great weight is to be given to the
28

1 determinations of -- the credibility determinations of the
2 Workers' Compensation judges.

3 And what I was going to say, I did go through those
4 cases. I believe there were about 175 that I have been involved
5 in in panels where we had reversed the Workers' Compensation
6 judge totally. And I found about 9 cases in there where there
7 were definitely credibility issues in the appeals, specifically
8 credibility issues of perhaps either the applicant or the story
9 in support of the applicant's position.

10 What I found was that in six of those cases, we had
11 affirmed the trial judge's decision on credibility and had
12 reversed on other issues. In a seventh case, the trial judge had
13 reversed a credibility determination of the Rehabilitation
14 Bureau; it was a rehabilitation case. And we reinstated the
15 Rehabilitation Bureau's finding on credibility. In the other two
16 cases, we did reject the credibil -- the majority in that
17 particular panel rejected the credibility finding of the Workers'
18 Compensation judge. And that's two out of two out of 1200 cases,
19 so I think that is great weight.

20 CHAIRMAN ROBERTI: Senator Ellis.

21 SENATOR ELLIS: I was just curious.

22 It was mentioned that it takes a long time to do one of
23 these cases.

24 What is the average time from when the Appeals Board
25 receives an appeal until a decision's made?

26 MS. LITTLE: Actually, maybe it would help if I talk a
27 little bit about our process at the Appeals Board level, because
28

1 I think there's some confusion as to how we handle the cases when
2 they get to the Appeals Board.

3 When they get up to the Appeals Board, they're first
4 assigned to a panel, and we have 60 different panel combinations.
5 I don't know how they're set up. They were set up long before I
6 ever got there, but they're set up in such a way that each one of
7 the Commissioners has about an even number of cases; an even
8 number of panels they're assigned to, with the exception of the
9 Chairman, who handles the administration of the office also, so
10 he doesn't take a full caseload.

11 After they're assigned to a panel, and it's the next
12 panel in order. When a case comes in, it is automatically
13 assigned to the next panel in order. The case is then brought to
14 the first panelist, and that panelist has three days to look at
15 the case, and research it, and make a decision on it. It's then
16 brought into the second panelist, who has two days to do the same
17 thing, and then the third panelist, who has two days.

18 Now, I usually get those cases off my desk the very day
19 they get to me, and so do most of the other members of the Board.
20 I'd say probably 95 percent of the time I get those cases off my
21 desk the very day that I get them, or I try to, because we have a
22 mandate to handle cases as expeditiously as possible also.

23 After the three panelists are done making their
24 decisions, if there isn't unanimity amongst the decisions of the
25 three panelists, the case will recirculate at least once to those
26 panelists who haven't seen the other panelists' decisions.

27
28

1 After that happens, it goes to a Deputy Commissioner,
2 who assigns it to a writer. Now, we have no control over which
3 writer is going to get that case. If we did, obviously, we'd all
4 use the same writers and there'd be some writers that would have
5 a lot of time on their hands.

6 After the case is then written, an opinion is written,
7 based on what our decisions were, and the reasons for our
8 decisions that we've articulated and whatever cases we're relying
9 on, or we've asked them to rely on.

10 The opinion then comes back to the panel, and it
11 recirculates usually in the same order that it circulated in the
12 first time, so that the first person who saw it the first time
13 would probably see it again. And that person would probably sign
14 on the right side of the page, although not necessarily. It
15 really doesn't mean anything, who signs on the right side of the
16 page or the left side of the page.

17 And it's my understanding that right now, we don't have
18 a backlog in our particular office. We haven't since I've been
19 there that I'm aware of. I mean, I've never had one on my desk.
20 So, we get those cases, and we have a mandate to get them out
21 within a certain amount of time, and we comply with that mandate
22 at the Appeals Board level.

23 SENATOR ELLIS: What is the time?

24 MS. LITTLE: Well, 30 days initially from the filing of
25 the petition, and then that 30 days can be extended for another
26 30 days, and 60 days is it.

27
28

1 SENATOR ELLIS: So, 60 days from the time it enters
2 until it's out?

3 MS. LITTLE: From the time the petition is filed.

4 What happens when the petition -- it's called a Petition
5 for Reconsideration, the appeal to us. And the first thing that
6 happens is that it goes back to the trial judge, the Workers'
7 Compensation judge or the administrative law judge, who writes a
8 report and a recommendation on that Petition for Reconsideration.
9 He has 15 days to do that, and then it comes up to us. And we
10 follow the process that I was just telling you about.

11 But it's 60 days total, even with the extension from
12 when that Petition for Reconsideration was filed.

13 SENATOR ELLIS: So then, what I'm assuming here is that
14 these judges -- we've had a couple of those up here, too; haven't
15 we? These fellows that don't have clocks in their rooms, and
16 things like that.

17 MS. LITTLE: That's the district offices, the Workers'
18 Compensation judges. They handle the litigation end of the
19 system. We handle the appellate end of the system.

20 SENATOR ELLIS: So maybe the delays that we've heard
21 about may be before they get to the Appeals Board.

22 MS. LITTLE: They would be, yes; they would be. Not at
23 our level.

24 SENATOR ELLIS: So the complaints about that, I guess
25 we'd better get on those judges for it.

26 MS. LITTLE: Well, all I can say is, I don't have access
27 to that information as to, if there are delays, where they are,
28

1 why they are, or what their solutions would be. But they're not
2 in our office to my knowledge.

3 SENATOR ELLIS: Okay.

4 CHAIRMAN ROBERTI: Is there any opposition in the
5 audience?

6 Before we take the opposition, I think we're going to
7 break for ten minutes so that the Reporter can change her paper.

8 Excuse me, proponents and then opponents. First we'll
9 take the proponents, and then we'll take the opponents. But
10 we'll do that in ten minutes.

11 (Thereupon a brief recess was taken.)

12 CHAIRMAN ROBERTI: We are reconvened.

13 Is there support in the audience? Please come forward.

14 MS. CAVAZOS: Mr. Chairman, Members, my name is Susan
15 Cavazos. I'm representing the California Self Insurers'
16 Association.

17 The California Self Insurers' Association represents the
18 employers in California who are self-insured for workers'
19 compensation. The Board of Directors of the CSIA are made up of
20 managers of workers' compensation for their respective companies.

21 They feel very strongly that Donna Little is an
22 excellent choice for the Workers' Compensation Appeals Board. We
23 believe that her opinions to date have reflected consideration of
24 the rights of all parties and sound judicial reasoning in the
25 interpretation of the applicable law.

26 We support Donna Little for this confirmation and
27 respectfully request that you vote aye.
28

1 Thank you.

2 CHAIRMAN ROBERTI: Thank you very much.

3 MS. COOK: Senator Roberti and Members, I'm Roberta Cook
4 with the California Chamber of Commerce.

5 I would echo Susan Cavazos' remarks, and state that the
6 Chamber is definitely in support of the confirmation of Donna
7 Little. We feel she's very qualified for this job and has the
8 applicable appellate experience to make her worthy in this
9 position. We urge your confirmation.

10 Thank you.

11 CHAIRMAN ROBERTI: Thank you very much.

12 Is there opposition in the audience?

13 MR. RABINE: Senator Roberti, Members of the Committee,
14 my name is Merle Rabine. I'm President Elect of the California
15 Applicants' Attorneys Association.

16 The California Attorneys --

17 CHAIRMAN ROBERTI: Senator Petris.

18 SENATOR PETRIS: I couldn't get your last name. Maybe
19 you could spell it for me.

20 MR. RABINE: Rabine, R-a-b-i-n-e.

21 SENATOR PETRIS: Thank you.

22 MR. RABINE: The California Applicants' Attorneys
23 Association opposes the appointment -- the confirmation of the
24 appointment of Donna Little as Commissioner of the Workers'
25 Compensation Appeals Board.

26 This is the first appointment in this administration
27 which we have opposed. There have been seven prior confirmations
28 which we have not opposed.

1 We first started hearing about Ms. Little from our
2 members shortly after she was appointed and started issuing
3 decisions. Some of our members were very unhappy with the
4 decisions that were coming out over her name, so that when her
5 confirmation was announced, we were anxious to review the cases
6 which were made available to the Committee in order to determine
7 whether or not we should oppose the confirmation.

8 We did review all of the decisions which were made
9 available to this Committee, both the first and second batches of
10 decisions. The decisions which we reviewed were only decisions
11 where Ms. Little was the lead author. The other panels in which
12 she participated we did not read. We read well over 200
13 decisions.

14 Of those, many were essentially noncontroversial
15 decisions, such as: a lien claimant did not have his lien
16 decided in a decision by a judge, so the lien claimant petitions
17 for reconsideration; the judge says, "Oh, yes, I forgot to deal
18 with this lien. Please send it back to me and I will," and the
19 Board sends it back.

20 Or, the applicant had a prior attorney who had a lien in
21 the file for attorney's fees, and the attorney's fees weren't
22 awarded to the prior attorney, so the prior attorney petitions,
23 and the Board sends it back to the judge to deal with the
24 attorney's fees issue.

25 Those are simple cases. They're all unanimous.

26 The other kind of case which you see a lot in reading
27 these cases are situations where one or the other party petitions
28

1 for reconsideration because the judge has made some kind of
2 error. The judge reviews the file; decides that he or she has
3 indeed made an error and recommends that the case be remanded to
4 the judge for further proceedings to deal with the error. The
5 Board unanimously grants reconsideration and sends it back to the
6 judge on his recommendation.

7 It's the cases where substance is an issue that we found
8 most disturbing. In our letter dated May 24th, we cited a number
9 of cases on those grounds.

10 The question of credibility determinations is not a
11 simple matter of determination of fact. It's a determination of
12 what one believes. And the reason for the Garza decision is that
13 the judge has the opportunity to watch the witness and listen to
14 the witness, and decides what he or she believes partly on that
15 basis.

16 The Board, in most cases, has only the judge's summary
17 of the evidence on which to make a determination. How can you
18 make credibility determinations based on a summary of evidence by
19 a judge? I don't know. But there are a number of cases in which
20 the judge's credibility decisions were overturned by the Board,
21 and where Ms. Little wrote the decision. And we have cited those
22 cases to you.

23 CHAIRMAN ROBERTI: Senator Ellis.

24 SENATOR ELLIS: Question on that point.

25 Now, we have other appellate type of boards; do we not?

26 MR. RABINE: Certainly.

27 SENATOR ELLIS: The Court of Appeals?
28

1 MR. RABINE: Yes.

2 SENATOR ELLIS: Do they bring in witnesses, and
3 interrogate them, and try to determine whether or not the witness
4 was telling the truth?

5 MR. RABINE: No, they don't.

6 SENATOR ELLIS: So they more or less sit in a closed
7 setting and review the record, I guess?

8 MR. RABINE: That's correct.

9 But the difference between the Court of Appeal in a
10 Workers' Compensation case and the Workers' Compensation Appeals
11 Board is that the Court of Appeal is required to uphold the
12 decision of the Workers' Compensation Appeals Board if it is
13 supported by substantial evidence.

14 The Workers' Compensation Appeals Board itself can make
15 its own independent determination as to the facts of any
16 particular case.

17 SENATOR ELLIS: Can't the Court of Appeals, don't they
18 do the same thing?

19 MR. RABINE: They shouldn't, not in Workers'
20 Compensation -- not by law, shouldn't, and in fact --

21 SENATOR ELLIS: Don't they do it? I mean, you know, the
22 Court of Appeals will come down with a decisions sometimes, and
23 everybody shakes their heads.

24 How can they have come to that conclusion? They didn't
25 see the witnesses. All they did was read some papers and
26 overturned the whole thing.

1 I frankly don't see what the difference is between --
2 and I'm not talking about Ms. Little, either, here specifically;
3 I'm talking about the entire process -- it seems to be a similar
4 process. And what you're objecting to could be applied to the
5 Court of Appeals also.

6 MR. RABINE: Well, the only thing that I would say to
7 that, Senator, is that when the cases get to the Court of Appeal,
8 there is a transcript that the justices review. So at least they
9 can review the words.

10 Now, words are a cold record. They don't see the
11 expressions on the faces, and they don't hear tones of voice.

12 And if the Court of Appeal is doing its job, it should
13 not be making determinations of fact, at least not in Workers'
14 Compensation cases.

15 Now, I can't tell you that it never happens. It doesn't
16 happen very often, or at least it shouldn't.

17 The result of my review of these records and that of my
18 colleagues is that we believe that Ms. Little, in her approach to
19 these cases, is result oriented. The cases that I've cited are
20 all cases in favor of the employer.

21 Now, this is not to say that every case that I read, or
22 that every case that she is the lead author of is in favor of the
23 employer. They are not. There are cases that are in favor of
24 the injured worker, and clearly, there are cases where she's
25 correct on the law, whether for the employer or for the employee.

26 But in the Duke case, which the Court of Appeal handed
27 down in May 11th, the Court said that the Board's decision on
28

1 which Ms. Little was the lead author was arbitrary, unreasonable,
2 not supported by substantial evidence in the light of the entire
3 record. And the Court questioned the Board's action in relying
4 on outmoded writ denied cases rather than current authority,
5 which in this case recognizes that consideration must be given to
6 a worker's diminished ability to compete in the open labor
7 market.

8 In that case, the Court took the very unusual step of
9 remanding the case to the Board with instructions to reinstate
10 the judge's decision. That almost never happens.

11 We think that this orientation which Ms. Little has
12 displayed in the decisions which we reviewed is inappropriate for
13 a Commissioner on the Workers' Compensation Appeals Board, and
14 for that reason we urge you not to confirm her appointment to the
15 Workers' Compensation Appeals Board.

16 CHAIRMAN ROBERTI: Thank you.

17 As the witnesses in opposition give their testimony, I
18 would like you, for my benefit, to speak in this framework: and
19 that is, if you consider that Ms. Little's decisions were
20 arbitrary.

21 I don't feel free to vote against an appointment based
22 on a conservative viewpoint other than one that I might have.

23 I would consider arbitrariness. That is a criteria, or
24 that is a problem, as being a criterion for casting a no vote,
25 but not necessarily policy; although, I can see where you could
26 have so many policy decisions that I'd find it so terribly
27 hostile that that would tilt the decision that way.
28

1 But basically, I give the Governor the benefit of the
2 doubt on his appointments, and I try to tilt against them when I
3 think the Appointee has been especially arbitrary.

4 So for my decision, I would hope you would focus on that
5 kind of point.

6 MR. RABINE: Two of the witnesses who are coming will
7 speak about the specific cases that they were involved in.

8 I would just point out that in other cases that we read,
9 that I have read, I don't have the whole record in front of me.
10 I only have the decisions, and only have what is characterized in
11 those decisions.

12 But it appears in many of the decisions where the judge
13 has relied on the applicant's testimony and on a particular
14 doctor, the decision that Ms. Little authored would rely
15 exclusively on the employer's doctor and say that "for the reason
16 that this doctor said," summarizing the evidence of that doctor,
17 but not the others.

18 Now, that's -- that seems to be to be a pattern, and it
19 seems to me to be -- I think that that's a kind of arbitrariness,
20 at least in the sense of a bias without enough discussion to
21 should that -- why she goes in that direction, except that that's
22 what she chooses to believe.

23 CHAIRMAN ROBERTI: Fine, thank you.

24 Senator Petris.

25 SENATOR PETRIS: I'd like you to go in more detail
26 describing the standard rule on appeal. What is the standard for
27 this Commission, this judicial body, on questions of fact?
28

1 MR. RABINE: The Workers' Compensation Appeals Board has
2 the power to decide questions of fact. The Appeals Board, the
3 Commissioners, have the power to reverse the Workers'
4 Compensation judge on issues of fact.

5 SENATOR PETRIS: Now, the Court, the judge down below,
6 then, is that the same as other agencies, like the ABC, for
7 example, where the judge only makes a recommendation, and all
8 cases automatically go up on appeal?

9 MR. RABINE: No, that is not. The Workers' Compensation
10 Appeals --

11 SENATOR PETRIS: The judge makes a decision, and then
12 there has to be an appeal to get to the next level?

13 MR. RABINE: Precisely. And as Ms. Little said, the
14 appeal is called the Petition for Reconsideration.

15 SENATOR PETRIS: But they do have the power to make
16 their own findings of fact?

17 MR. RABINE: And are required to do so by the Labor
18 Code.

19 SENATOR PETRIS: But what you're saying is that in the
20 cases that you're complaining about, the facts are established by
21 witnesses. The judge, who is in a position by trying the case to
22 eye the witness, confirms, you might say, certain facts, but on
23 appeal, they're reversed.

24 MR. RABINE: Precisely.

25 SENATOR PETRIS: What you're saying is that in the cases
26 that you're criticizing, there were reversals on facts without
27 other supporting facts to back them up; is that it?
28

1 MR. RABINE: In these decisions, opposing factors are
2 cited by the decision. Certainly, I mean, it's not -- it's not
3 like that. There is a conflict clearly.

4 The decisions that we're criticizing on the grounds of
5 findings of fact are where a credibility is at stake. And
6 credibility, according to the Garza case, which Ms. Little
7 referred to today, is --

8 SENATOR PETRIS: Which one is that?

9 MR. RABINE: That was the one where the Supreme Court
10 said that where the trial judge makes a decision on credibility,
11 if it's supported by substantial evidence, it should be given
12 great weight by the Board and by reviewing courts.

13 SENATOR PETRIS: Well, that's a standard laid down by
14 the Supreme Court.

15 MR. RABINE: That's correct.

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16 great weight by the Board and by reviewing courts.

17 SENATOR PETRIS: Well, that's a standard laid down by
18 the Supreme Court.

19 MR. RABINE: That's correct.

20 SENATOR PETRIS: that's what I was looking for. I
21 wasn't looking just for the power, but what is the standard that
22 the Supreme Court has indicated should be applied.

23 So, if the finding of fact by the judge is supported by
24 substantial evidence, that should be it?

25 MR. RABINE: Well, it should be given great weight.
26 That's not to say that the Board can't --

27 SENATOR PETRIS: It's not final.
28

1 MR. RABINE: -- it's not final.

2 SENATOR PETRIS: They still have the power.

3 MR. RABINE: They still have the power; that's correct.

4 SENATOR PETRIS: Thank you.

5 CHAIRMAN ROBERTI: What we do is, we take the
6 opposition, and unless there is something that is compellingly
7 derogatory, we would hope that you would wait for rebuttal.

8 Senator Ellis, then Senator Craven.

9 SENATOR ELLIS: Senator Roberti indicated what he would
10 like to have the witnesses comment on.

11 I'd like to have them comment on whether or not they
12 feel that Ms. Little is qualified, not wither or not she's
13 biased. But is she qualified to sit in the position?

14 MR. RABINE: I have no reason to believe that she is
15 unqualified.

16 SENATOR ELLIS: You believe she is qualified?

17 MR. RABINE: As far as I know.

18 SENATOR ELLIS: Thank you.

19 CHAIRMAN ROBERTI: Senator Craven.

20 SENATOR CRAVEN: Thank you.

21 Mr. Rabine, you obviously don't think too highly of
22 those people who serve as colleagues of Ms. Little; do you?

23 MR. RABINE: We did not oppose any of them for
24 confirmation.

25 SENATOR CRAVEN: Which is somewhat ironic. If I
26 understood the percentages which were quoted, and hopefully you
27 heard earlier -- and this is obviously an oversimplification, but
28

1 you have to recognize you're dealing with a rank layman -- if I
2 interpreted those correctly, she has, in effect, been on the
3 winning side about 97-98 percent of the time. And in order to do
4 that, she must have had someone join her in that decision and
5 judgment.

6 And if now you come and tell us that she's not doing the
7 job well, then you must be indicting those people who joined her
8 in the 97 percent.

9 MR. RABINE: We think that the decisions which we have
10 criticized, on which she was the lead author, were incorrect.
11 And we believe that those who joined her were also incorrect.

12 There were, in a number of the cases that I cited to you
13 in my letter of May 24th, in a number of those cases there were
14 dissents --

15 SENATOR CRAVEN: Yes.

16 MR. RABINE: -- specifically on the issue of
17 credibility.

18 SENATOR CRAVEN: Well, as I said, you're not only not so
19 keen about her, you feel about the same way with a lot of the
20 people with whom she serves, which you have just said.

21 MR. RABINE: Yes.

22 SENATOR CRAVEN: In doing the researching to look at the
23 statutes, or precedent, or whatever, that is not necessarily done
24 by the attorney. That's done at times, and perhaps most of the
25 time, by a clerk; is it not?

26 MR. RABINE: I am not familiar with the procedures of
27 the Workers' Compensation Appeals Board, but there will be
28 another witness who is.

1 SENATOR CRAVEN: Let's go to your own practice of law.

2 Do you have a clerk, a law clerk, that works for you?

3 MR. RABINE: No.

4 SENATOR CRAVEN: You don't?

5 MR. RABINE: No.

6 SENATOR CRAVEN: Do you do your own researching?

7 MR. RABINE: Yes, I do, in every case.

8 SENATOR CRAVEN: I see, but in firms of larger size than
9 your own, do you find it familiar that they have a law clerk?

10 MR. RABINE: I am told that there are firms that have
11 law clerks that do that sort of thing, yes.

12 SENATOR CRAVEN: And ordinarily, when they hire people
13 in that capacity, they obviously have faith in their intelligence
14 and their ability to do the researching properly. I would say
15 that that would be a normal thought.

16 MR. RABINE: I would think so.

17 SENATOR CRAVEN: And would it not also be normal if she
18 chose to stay with the research delivered to her by a clerk,
19 which in effect was somewhat outmoded by virtue of changes in the
20 law? It was a very honest mistake, and somewhat to be expected?

21 MR. RABINE: Well, I would have thought, Senator, that
22 the person who signs the decision, or the brief that is submitted
23 to the court, is responsible for what's in it, no matter who has
24 done the research.

25 SENATOR CRAVEN: I don't think there's any question
26 about that. I stipulate that.

27

28

1 MR. RABINE: I don't know how to answer the question
2 otherwise.

3 SENATOR CRAVEN: Well, maybe it was a poor question; I
4 don't know. I'm just trying to get to the point here.

5 You've mentioned, and properly so, Mr. Rabine, several
6 cases which you seem to feel are inappropriate. And you know
7 that old saying among nonlawyers: if you want ten opinions, get
8 ten lawyers, or maybe eight will give you ten.

9 But the situation that I'm reminded of is the fact that
10 she has dealt, I think, with 1200 cases, if I recall. And you're
11 only really picking up a couple.

12 If you hit to that average with the Sacramento Solons,
13 you would have found yourself with the New York Yankees in a
14 matter of hours. That's a pretty good percentage, I'd say.

15 MR. RABINE: Well, I think that you should remember,
16 Senator, that many, many of the decisions that get counted in
17 that 1200 are the kinds that I talked about early on: the
18 inadvertent leaving out of something; or a mistake that the judge
19 now believes was a mistake and asks to --

20 SENATOR CRAVEN: Small, inconsequential things.

21 MR. RABINE: They're not necessarily small, but from the
22 point of view of the Board, it's an almost automatic decision --

23 SENATOR CRAVEN: Yes.

24 MR. RABINE: -- to send back.

25 SENATOR CRAVEN: We have legislation like that, too.

26 MR. RABINE: Right.
27
28

1 SENATOR CRAVEN: You know, people say, "How come you
2 have so many bills?" Some of them are changing a work, or a
3 comma, or something like that.

4 MR. RABINE: Precisely.

5 SENATOR CRAVEN: I understand what you're saying.

6 MR. RABINE: So that in terms of decisions where issues
7 of substance are being decided, I would think that the percentage
8 would be much higher.

9 Now, I can't give you a percentage. We didn't count the
10 cases.

11 SENATOR CRAVEN: Yes.

12 Let me ask you one question. You've got to bear with me
13 because, as I said, I'm a layman.

14 You don't think for a moment that she must do what
15 another court has said that they feel is appropriate; do you?

16 MR. RABINE: I'm sorry; I don't understand the question.

17 SENATOR CRAVEN: Well, in other words, if I decide,
18 "Yes, with reservations," and it goes to another judicial body,
19 they have to decide "yes, with reservations" too? They say,
20 "No."

21 Do you think that that's within her purview, or a
22 prerogative of hers to make that decision, even though it is
23 somewhat flying in the face of a prior decision?

24 MR. RABINE: No, I don't.

25 SENATOR CRAVEN: Don't you really? Why not?

26 MR. RABINE: I think the Workers' Compensation Appeals
27 Board, as an inferior appellate body, is bound by the law as set
28 forth by the Courts of Appeal and by the Supreme Court.

1 SENATOR CRAVEN: Yes.

2 MR. RABINE: And they don't have the power to change
3 that because of their own idea of what the law should be.

4 SENATOR CRAVEN: What court handles it before it comes
5 to her body?

6 MR. RABINE: The trial judge.

7 SENATOR CRAVEN: So, we're not really dealing with
8 either of the two that you just mentioned; are we?

9 MR. RABINE: No, but if the issue which is before the
10 Workers' Compensation Appeals Board is one on which there is
11 decisional law, then the Board is required to follow that law.

12 SENATOR CRAVEN: Yes, that gets back to what you said
13 about the fact; is it not?

14 MR. RABINE: No.

15 SENATOR CRAVEN: No, that's something else?

16 MR. RABINE: No, this is a question of law.

17 SENATOR CRAVEN: Oh, I see.

18 MR. RABINE: On questions of law, the Board -- the
19 Commissioners of the Workers' Compensation Appeals Board are
20 bound by the decisions of higher courts.

21 SENATOR CRAVEN: Yes.

22 Do not justices of great repute and long standing
23 sometimes err and are caused to be reversed?

24 MR. RABINE: Oh, yes.

25 SENATOR CRAVEN: So, she may join a very exclusive and
26 illustrious group of people if she has had that experience.
27
28

1 MR. RABINE: We don't have a criterion of perfection for
2 appointments to the Workers' Compensation Appeals Board. If we
3 did, we wouldn't have any Commissioners.

4 SENATOR CRAVEN: And I'm glad we have it in the
5 Legislature.

6 (Laughter.)

7 SENATOR CRAVEN: Thank you, Mr. Rabine. You've been
8 very kind.

9 CHAIRMAN ROBERTI: Anything further? Any further
10 questions?

11 Next Witness.

12 MR. RABINE: Thank you, Senators.

13 MR. CANTRELL: My name is Richard Cantrell. I am the
14 Legislative Chairman of the California Applicants' Attorneys
15 Association and immediate past President.

16 I, too, joined Mr. Rabine in reviewing the decisions
17 which were available to us. I, too, found the same pattern of an
18 arbitrary refusal to follow the law as required in making
19 credibility determinations.

20 The law requires the Appeals Board on reconsideration to
21 determine whether there is evidence to support the finding of
22 fact. The pattern we have seen in these decisions is not to do
23 that.

24 The pattern is not to review whether there is evidence
25 to support the finding of fact, but to determine whether there is
26 other evidence to reverse that finding of fact.

27
28

1 Now granted, the Board does have the limited power to do
2 that. However, the first inquiry by the Appeals Board is whether
3 there is evidence to support the original finding of fact by the
4 trial judge.

5 On the question of credibility, the law is clear, in
6 exercising that judgment whether there is evidence to support the
7 finding of fact, when there is a question of who's telling the
8 truth or not, there must be some deferral to the trial judge
9 because the trial judge did have the opportunity.

10 Senator Ellis raised the question as to the difference
11 between the Appeals Board and the Court of Appeals. The Court of
12 Appeals does not make a determination on credibility. The
13 question of evidence is not for the court of Appeals to
14 determine.

15 The Appeals Board does have the power. The Appeals
16 Board, in fact, does have the power, if there is a question of
17 credibility, to take additional testimony from those same
18 witnesses.

19 In none of these cases, in fact, in none of the times
20 that we have seen this administration that I'm aware of, has
21 there ever been a case where the Appeals Board came down and took
22 additional evidence to determine credibility of these witnesses.
23 There were never any further hearings that we could determine
24 from this record.

25 We think before a person loses their rights and their
26 benefits because they're found to be false in their testimony,
27 there ought to be at least an opportunity to be heard by the
28

1 person who is going to determine they're liars. That was not
2 done in this case.

3 We do not question that Ms. Little, in her writing and
4 in the law that is set forth in her decisions, does recite the
5 law correctly.

6 I have a slightly larger firm than Mr. Rabine, and I
7 have law clerks in my firm. My law clerks do do some basic
8 research. Their job is to research the point that I think should
9 be made to determine whether it can be made. And if it can be
10 made, to furnish me the cases upon which I can make that point.
11 That's what the law clerk's function is.

12 But it's my license as an attorney; it is my reputation;
13 it is my client at stake, and it is my decision; it is my
14 signature. It is not a law clerk's responsibility. There is no
15 protection for me or anyone else because a law clerk goofs.

16 And in fact, I will say the Appeals Board's and
17 Ms. Little's decisions do correctly state the cases as to what
18 the law should be. It's the interpretation of the law, the
19 arbitrary nature of departing from that to find and search out
20 that portion of the record that is adverse.

21 Now, 100, probably, of those 1200 cases are what we
22 would call a slam-dunk. Everybody should be unanimous on that
23 decision. There's no dispute about those.

24 It is in the areas where there has to be some
25 determinations made that we constantly see, or we have seen, a
26 pattern of reconsideration granted and injured workers' benefits
27 taken away in the decisions that Ms. Little has authored.
28

1 Therefore, we are opposed to her confirmation. Thank
2 you.

3 CHAIRMAN ROBERTI: Thank you.

4 Any other opposition in the audience?

5 MR. WILLIAMS: Thank you, Senator Roberti. My name is
6 Barry Williams. I am a practicing attorney in San Francisco, and
7 I represent injured workers before the Workers' Compensation
8 Appeals Board, and I have been doing so for 20 years, with the
9 exception of three years when I was a Workers' Compensation judge
10 between 1978 and 1981.

11 For two of those years, I had the privilege and honor of
12 working with the Workers' Compensation Appeals Board as a staff
13 judge in charge of the unit that prepares the -- one of the units
14 that prepares the written opinions for the Commissioners. They
15 are staff attorneys for the State of California and not merely
16 law clerks. By and large, they are good attorneys who know what
17 to do and take instruction from the Commissioners, and it is the
18 Commissioner who is responsible for the quality of the opinion.

19 They do not have available, and the Committee could not
20 very well ask for it, probably, the deliberation record that is
21 -- that Ms. Little alluded to, the file being passed around,
22 going from Commissioner to Commissioner, and there is a
23 deliberation record that is prepared on each case where the
24 Commissioners put down their thoughts, sometimes in great detail,
25 about what they want in a decision.

26 To move on, at the present time I am the Chairperson of
27 the Amicus Curiae Committee of the California Applicants'
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1 Attorneys Association, and also a past President of the
2 Association.

3 I have personal knowledge of some of the cases that are
4 involved in the cases reviewed by the California Applicants'
5 Attorneys Association, either as the attorney or record, or a
6 member of the firm that was involved in those decisions.

7 I want to make some comments on those, but before I do
8 so, I'd like to go back a little bit in history, back 20 years
9 ago -- back, actually, 18 years ago -- when the Supreme Court
10 took a great deal of interest in Workers' Compensation and issued
11 some very important decisions which are supposedly supposed to
12 set the tone for what happens in the field of Workers'
13 Compensation.

14 This happened in an era when the Workers' Compensation
15 Appeals Board then, as now, was reversing many decisions of the
16 Workers' Compensation Appeals Board [sic], and many of those
17 cases were going to the Courts of Appeal and being reversed and
18 annulled by the Court of Appeal. One need only look at the
19 California Compensation case volumes to see how they grew in size
20 from 1966 through 1972 to see what was happening.

21 The Garza case is -- Garza vs. WCAB -- is very
22 significant in that that is where the Supreme Court said that the
23 findings of the Workers' Compensation judge were to be given
24 great weight in the review process by the Workers' Compensation
25 Appeals Board.

26 Another case was Lamb vs. WCAB, where I believe the
27 Supreme Court used the term "evidence of considerable
28

1 substantiality" was required if the Board was to reverse the
2 Workers' Compensation judge, whether on issues of credibility or
3 on the findings of fact made by the judge where credibility might
4 not necessarily be involved.

5 And another case that's significant is LeVesque vs. WCAB
6 where the Court did several things, but among them, the most
7 important of the holdings, was that the evidence that was needed
8 to support a Board decision was evidence on the record as a
9 whole, and not just any evidence that would support a decision.

10 I would like to speak briefly about the Duke case and
11 some of the questions that had been raised on that case.

12 Danny Duke was a worker in a factory where they made
13 paint colorant and was exposed to solvents over a period of
14 years. He had no problems of headaches when he went to work, in
15 fact, had no problems with headaches until three or four years
16 later when, after prolonged exposure to the chemicals, he began
17 to have headaches on a constant basis.

18 He left work on the advice of his doctor. And his
19 doctor told him that he should not work in that environment. The
20 doctor relied upon by the judge said he should not work in that
21 environment, and under the case law that has evolved recently,
22 that justifies a rating for a preclusion or a portion of the
23 labor market from which the worker is precluded.

24 And the judge ruled in Danny Duke's favor on conflicting
25 evidence on causation. The Appeals Board affirmed on the
26 conflicting evidence of causation, but reversed on the issue of
27 permanent disability. And what the Board did, with Donna Little
28

1 as the lead Commissioner, was reach back to cases that had their
2 genesis in 1928 and 1930, in painters' dermatitis cases, to
3 reverse the Appeals Board -- I'm sorry, the cases said that these
4 sensitivities were considered to be a personal idiosyncrasy or a
5 constitutional defect. And this line -- and while each exposure
6 could constitute a period of temporary disability and cause a
7 need for medical treatment, there was no permanent disability.

8 In the late '50s and early '60s, this doctrine slowly
9 died out, and there are a lot of writ-denied cases that were --
10 where the Board awarded permanent disability. The defendants
11 took it up, and the courts denied the writs of review.

12 Then, none other than Justice Marcus Kaufman, in a case
13 called Nielsen in 1974, ruled that a permanent disability award
14 in a sensitivity case was probably -- the substantial evidence
15 did not support the low amount of the award.

16 In the Duke case, we don't have particularly an issue of
17 credibility. We have the Commissioners reaching back to these
18 60-year old cases and not doing the research, perhaps.

19 And Senator Roberti, I would characterize this decision
20 as arbitrary, unreasonable, and in the brief I used the term
21 "bizarre and unusual."

22 And the Court of Appeal issued the Writ of Review;
23 ordered the Board to bring its record up, or send the record up
24 to the Court of Appeal for review, which is the procedure. And
25 they did a very unusual thing in oral argument.

26 I've argued a lot of cases before the Court of Appeal
27 and the Supreme Court and seen a lot of arguments. And as I got
28

1 up at the podium to present the petitioner's case, which is the
2 normal order or proceeding, the Presiding Justice says, "Counsel,
3 we want to hear from the respondent first." That is very
4 unusual. And a lot of questions were asked, and the Court did,
5 in ten days or seven days after its oral argument, issue its
6 decision, and did again this unusual thing of characterizing the
7 Board decision as:

8 "... arbitrary, unreasonable, and
9 not supported by substantial evidence
10 in light of the entire record."

11 Normally, it would just say it wasn't support by substantial
12 evidence in light of the entire record.

13 And they ordered the Board to reinstate the Appellate
14 Judge's decision, almost unheard of. And today, I learned the
15 Board is seeking a rehearing on that point because they're
16 unhappy about that.

17 I want to discuss another case which I believe falls
18 into your category of arbitrary and unreasonable. We are the
19 attorneys for the lien claimant, Kaiser Foundation Hospital
20 Permanente Medical Group in a case called Hurlburt, cited at the
21 bottom of Page 2 of Mr. Rabine's letter.

22 Mr. Hurlburt was -- this was a very hotly contested
23 case, with multiple depositions, multiple witnesses, and lengthy
24 hearings before the Workers' Compensation judge.

25 Mr. Hurlburt worked for a locksmith, and he would go out
26 in the evening and make calls, and change locks through his
27 employer. And sometimes he would do this on his own and report
28 back to his employer.

1 Mr. Hurlburt was rendered quadriplegic and
2 institutionally confined as a result of an automobile accident
3 while on the way to an employer's -- on the way to premises, a
4 laundromat, where the owner of the laundromat had been shot, and
5 where the evidence established to the satisfaction of the
6 Workers' Compensation judge that Hurlburt had been called by a
7 relative of the laundromat owner, who had just been shot, to
8 please come and secure the premises. Because, this was in an
9 area of San Francisco where there are citizens, people, who do
10 not wish property owners well.

11 CHAIRMAN ROBERTI: What do you mean by "just been shot"?

12 MR. WILLIAMS: The owner of the laundromat had been shot
13 by a burglar or by a criminal.

14 CHAIRMAN ROBERTI: What was the period of time?

15 MR. WILLIAMS: Almost immediately. I mean, this
16 happened, like, at 7:00 o'clock; the call comes at 7:30 -- I
17 don't have the time sequence quite right, but almost immediately,
18 Hurlburt is called, climbs into the company truck, and on the way
19 to the laundromat is involved in the accident.

20 The judge resolved the conflicts in the evidence in
21 favor of Hurlburt. And the Workers' Compensation Appeals Board,
22 Ms. Little the lead Commissioner, reversed.

23 There's some legal issues involved, but what is really
24 critical is that the -- you have this whole series, this whole
25 mass of evidence which is conflicting, and which the Workers'
26 Compensation judge has sorted out.

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1 She did not cite evidence of considerable substantiality
2 to reverse the Workers' Compensation judge. It appears to my
3 observation that she reversed because she did not like the
4 result.

5 We have a man whose hospital bills are over \$200,000
6 now, doctor bills, \$200,000 now, and is going to be on the public
7 welfare roles. Now, that is not a reason why an injury should be
8 found compensable if it is not. But in this case, the judge
9 found it compensable, ruled on the credibility of the witnesses,
10 and also on conflicting factual testimony, and the Workers'
11 Compensation Appeals Board took it away, just like that.

12 That case is before the Court of Appeal, and we do not
13 know what is going to happen.

14 Another case that I have some knowledge of involves
15 Albrecht, which is cited on Page 3. This was a penalty case.
16 The -- there is a penalty for unreasonable delay in the payment
17 of compensation, 10 percent. And when an award or a settlement
18 -- the payment of a settlement is delayed after approval by the
19 Workers' Compensation judge, and it is unreasonable, there is a
20 10 percent penalty.

21 There is also interest that is required to be paid on an
22 award when it is paid anytime after the first day. It's a 10
23 percent add-on for interest.

24 The Board had held in previous years that interest was a
25 separate specie or kind of benefit, so that if interest was
26 delayed, you compute the interest and add 10 percent. So, you
27 might have interest of \$75, so the penalty would be \$7.50.
28

1 The argument was made by the Applicants' Attorneys,
2 "Well, that isn't right. The interest should attach to the
3 benefit that was delayed." And the benefit delayed here was a
4 compromise and release of several -- many thousands of dollars.

5 I was involved in a case in the Court of Appeal called
6 Gellie Vs. WCAB, cited in the brief, where the Court said, "Yeah,
7 the interest attaches to the underlying benefit. You delay the
8 payment of permanent disability, the interest that was delayed
9 attaches to the permanent disability and you pay 10 percent of
10 the permanent disability."

11 In Albrecht, the Board disregarded the Gellie case and
12 reached a result-oriented decision and didn't award the penalty.
13 I grant you that that was an affirmance of a decision by the
14 Workers' Compensation judge, who had ruled in that way, but I
15 believe that was incorrect on the law, and that that is also a
16 result-oriented decision.

17 I would not be here opposing Donna Allison Little if it
18 were merely a matter of the Governor appointing a Commissioner
19 who had a conservative bent. There are seven Commissioners who
20 have been appointed by the Governor who, you can bet and know,
21 have the philosophical viewpoint closer to the Governor than to
22 the Democratic administration or, perhaps, the Members of this
23 Committee.

24 This is different. These decisions are reaching out to
25 reach a result-oriented decision without giving a basis for the
26 reversal of the Workers' Compensation judge, in my view.

27
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1 There is one other -- well, there are several other
2 cases that I have personal knowledge of that I could discuss. I
3 think I have commented sufficiently to convey to the Committee my
4 viewpoint on this.

5 CHAIRMAN ROBERTI: Thank you very much.

6 Any questions?

7 Is there any other opposition in the audience?

8 MS. HAWES: Good afternoon, Senator Roberti, Members of
9 the Committee. My name is Amanda Hawes, and I'm here both as a
10 private attorney and as a representative of SCCOSH, the Santa
11 Clara Center for Occupational Safety and Health.

12 A letter was submitted to your Committee by SCCOSH in
13 opposition to the confirmation of Ms. Little. I'm here this
14 afternoon to discuss a particular case which, I think, does
15 illustrate both arbitrariness and bias against injured workers,
16 and it's the case of Kathy Wilson vs. Burke Industries, in which
17 I represented Ms. Wilson.

18 I am an attorney in the Silicon Valley, home of the
19 electronics industry. For ten years, I've represented production
20 workers in the Santa Clara Valley whose lives have been affected
21 by industrial chemical exposure. The vast majority of my clients
22 are women, single parents, who are struggling to support
23 themselves and their children.

24 Chronic exposure to industrial chemicals can result in
25 an acquired sensitivity to one or more chemicals found in
26 everyday life. When that unfortunate event occurs, the person
27 who is so affected can have great difficulties finding gainful
28

1 employment that does not further endanger her health. And this
2 is because so many jobs in the open labor market contain
3 chemicals in one form or another.

4 The reality of the 1980s is that a person who is
5 physically sensitive to, and affected by, such things as solvent
6 vapors, cigarette smoke, paint fumes, pesticides, motor vehicle
7 exhaust, cleaning agents, irritant dusts, perfumes, and/or an
8 array of manufacturing chemicals cannot compete in the open labor
9 market as effectively as a person can who does not have these
10 limitations.

11 Commissioner Little appears to be unable to understand
12 this reality, and her decision in the Kathy Wilson case, I think,
13 is evidence of this fact.

14 Ms. Wilson, like many, is a single parent who developed
15 bronchial asthma as a result of chronic exposure to chlorine at
16 her work. Her medical condition and its cause were undisputed.
17 All the doctors who evaluated her imposed restrictions against
18 working in environments which could irritate her respiratory
19 system and induce asthmatic episodes.

20 She testified without contradiction that she developed a
21 bronchial irritability in a wide range of environments, and gave
22 many specific examples. On her behalf, we offered the
23 professional opinion of a vocational rehabilitation expert
24 regarding the percentage of jobs in the open labor market in
25 which she would be likely to be exposed to one or more of these
26 irritants. The professional opinion of Mr. Morell was that she
27 was effectively precluded from 42 percent of the open labor
28 market because of these restrictions.

1 We urged that her permanent disability rating this labor
2 market evidence be taken into account, as respected precedent
3 indicates should be the proper procedure. The trail judge failed
4 to do this, and instead was content to award an 11.5 percent
5 permanent disability.

6 On reconsideration, Commissioner Little wrote a lengthy
7 opinion rejecting the concept that environmental restrictions are
8 relevant to the concept of permanent disability, which I think is
9 the same approach that was taken in the Duke case that was
10 recently reversed. In both cases, in our view, this is an
11 unwillingness or inability to come to terms with the reality of
12 acquired chemical sensitivity and how it affects an injured
13 worker.

14 These decisions threaten the chance for even modest
15 compensation for anyone whose job has precluded her from a
16 measurable component of the open labor market and fly in the face
17 of established precedent.

18 On May 5th, the California Supreme Court granted Kathy
19 Wilson's petition for review and has ordered the Sixth Circuit --
20 Sixth District Court of Appeal to review Commissioner Little's
21 decision. We thus have some cautious optimism that Kathy Wilson
22 will prevail, and the courts will affirm what she and many others
23 know is true, that environmental restriction is just as disabling
24 as a lifting restriction, and interferes just as much with the
25 opportunity for gainful employment.

26 Commissioner Little doesn't understand or doesn't accept
27 this reality. She cited authority from what we would consider
28

1 the Dark Ages to defend an outmoded and indefensible schedule of
2 disabilities. The cases of Kathy Wilson and that of Danny Duke,
3 we do not think, are by any means unique. There are many others
4 whose lives have been affected in a similar way.

5 The puny compensation that Ms. Little would award them
6 is in no way compensation for their losses.

7 And finally, I would just say that Workers' Compensation
8 benefits, in our view, are modest enough as it is. Seldom does
9 the prospect of Workers' Compensation provide any real financial
10 incentive for the employer to remedy job hazards, especially when
11 the ultimate effect comes from chronic, cumulative exposures for
12 which the employer is doing no monitoring. It is an outrage that
13 Commissioner Little would sanction a situation which gives every
14 encouragement to employers not to change their practices. Her
15 performance as a Commissioner in these cases does not bode well
16 for Californians with chemical exposures at work.

17 Thank you.

18 CHAIRMAN ROBERTI: Thank you very much.

19 Any other witnesses?

20 Senator Petris.

21 SENATOR PETRIS: On that last part of your statement on
22 the small amount of the compensation or the award. I heard last
23 night that our State is 31st in the nation in the ranking of how
24 much we award.

25 Is that right? Is that correct?

26 MS. HAWES: I believe that's in the range. It's nothing
27 to be proud of.
28

1 The 11 percent disability was about \$5,000, to give you
2 some idea of what she was awarded. Were she to be given
3 recognition for her environmental sensitivities, the change would
4 be on the order of an additional \$25,000, but again, nothing that
5 is going to set it right in terms of the injury done to her.

6 SENATOR PETRIS: Thank you.

7 CHAIRMAN ROBERTI: Ms. Little, you can rebut now.

8 MS. LITTLE: Actually, the reason I asked to do it
9 earlier was, I can't read my own handwriting after about two
10 minutes, so bear with me.

11 First of all, one thing that I did want to state in
12 response to something Senator Mello had said earlier is, I just
13 want to clarify that I've never discussed how to decide cases, or
14 been influenced in any way in my decision making by either the
15 Governor or Mr. Rinaldi. So, I wanted to clarify that point.

16 What we've heard here, frankly, is a lot of noise about
17 two credibility determinations, reversals, out of 1200 cases. I
18 mean, if that's not great weight, I don't know what is. And
19 frankly, I'm not offering any apologies for those two cases. I
20 believe our decision was correct.

21 Now, Mr. Rabine -- by the way, our standard of review is
22 a trial de novo. The Court of Appeal standard of review for us
23 is substantial evidence, but ours is a trial de novo standard of
24 review.

25 SENATOR PETRIS: Do you bring in witnesses and question
26 them?

27 MS. LITTLE: No, we only see the record. Now --
28

1 SENATOR PETRIS: You can't have a trial de novo without
2 some parties; can you?

3 MS. LITTLE: Well, we're suppose to weigh the evidence
4 afresh. We're not supposed to be looking to see if there's
5 substantial --

6 SENATOR PETRIS: Do you read the transcript?

7 MS. LITTLE: That's what I was going to get to in a
8 second.

9 Now, Mr. Rabine brought up the point that we rely
10 sometimes on summary of evidence.

11 What happens is, the trial judge usually prepares a
12 summary of evidence, and there usually is a transcript. It's up
13 to the parties, if that summary of evidence is wrong, to call it
14 to our attention and to ask us to wait for the transcript. When
15 they do that, we usually do. If they don't, we assume that the
16 summary of evidence is correct. It's for them to call it to our
17 attention. So if they haven't done that, you know, they've
18 waived that.

19 SENATOR PETRIS: I guess you're saying it wasn't done in
20 those cases?

21 MS. LITTLE: Well, I'll get into those specific cases as
22 much as I can remember them. I don't have the cases with me.

23 By the way, I never received this letter of the 24th
24 that has been referred to repeatedly, so I have no idea what's in
25 it.

26 I also didn't receive the letter that was filed by
27 SCCOSH, I guess, was the organization. I don't know when it was
28

1 filed, but I haven't seen either of those, so I can't really
2 respond to them.

3 Mr. Rabine made much ado about the lead author. As I
4 described before, our process, we don't write the opinions
5 ourselves. The fact that somebody signs on the right side of a
6 page doesn't mean anything, other than they probably were the
7 person who put more paper clips on the file because they saw it
8 first.

9 In the Court of Appeal or Supreme Court, if somebody
10 signs on the right side of a page, and I know it from my own
11 experience there, it means that they were personally responsible,
12 or their staff, for reviewing that file, and writing that
13 opinion, and were responsible generally for that case.

14 At the Appeals Board, as I described before, I won't go
15 into the process again, that's not the situation. We each look
16 at the cases for about the same amount of time, and then it's
17 written by a staff writer. We have no control over who that
18 staff writer is.

19 Some of our staff writers are very good; some of them
20 have room for improvement, obviously. They're civil servants,
21 and I think I had an excellent reputation as a writer before I
22 came to the Appeals Board, so I'm not always happy with those
23 cases myself. And I'm not saying that they're always written the
24 best way.

25 SENATOR PETRIS: Could I ask you a question?

26 MS. LITTLE: Sure.

27 SENATOR PETRIS: I'm sort of interrupting you.
28

1 Does the staff writer have a summary from the
2 Commissioner, or some guide or indication? How does that work?

3 MS. LITTLE: Mr. Williams referred to the deliberation
4 record. When the case is circulating amongst the Commissioners,
5 we write down on the deliberation record our decision, the
6 reasons for our decision, and sometimes we actually cite cases in
7 there if there are specific cases we think should be relied on in
8 the opinion. That's what they're supposed to rely on when they
9 write the opinion. Obviously, they go into more depth when they
10 write the opinions themselves.

11 In terms of what comes back, quite honestly, I would
12 rewrite every single case if I could, probably, you know, other
13 than for the one or two writers that are good. But we have a
14 mandate to expeditiously decide cases, and very frequently we
15 find ourselves in the situation where we get an opinion back, and
16 it's not wrong, but on the other hand, I might not be perfectly
17 satisfied with it either in terms of its contents. I would like
18 to have more content in it, but it's a question of my spending
19 the time to rewrite it, and ten other cases being held up, which
20 is a judgment call that we make. And I think that the mandate
21 that you've given us, the Constitution gives us, to expeditiously
22 decide cases is probably more important than dotting the "i's"
23 and crossing the "t's" in some of these cases.

24 SENATOR PETRIS: I don't know. The stuff they talked
25 about is more than that.

26 MS. LITTLE: Well, I'm going to get into the stuff they
27 talked about.
28

1 SENATOR PETRIS: Who decides who chooses the lead
2 author? Is that just by rotation?

3 MS. LITTLE: Well, there is no lead author as such. I
4 mean, this is something that Mr. Rabine was talking about. We
5 really don't have a lead author.

6 The person who signs on the right is just usually the
7 first person who saw the case. It's actually written by the
8 staff writer.

9 SENATOR PETRIS: He's spent one more day on it than the
10 others.

11 MS. LITTLE: Well, as a practical matter, probably not,
12 because we all get them off our desks most of the time the day
13 that we got them. But yes, if they would be entitled to spend
14 one more day with it, the case, generally speaking.

15 But not always. I mean, cases come back to me that I
16 didn't see first. Sometimes if somebody's out of the office,
17 I'll sign on the right. Or, if I have something I want to
18 rewrite in the case, somebody else's case that they were first
19 assigned, I might sign on the right. It really doesn't mean all
20 that much.

21 SENATOR PETRIS: Now, when the staff writer completes
22 the decision and circulates it again, what's the procedure at
23 that point? Does each Commissioner review it and read the cases
24 and --

25 MS. LITTLE: Yes.

26 SENATOR PETRIS: -- and change it if they want to?
27
28

1 MS. LITTLE: Each Commissioner reads the opinion, and I
2 can't speak for what the other Commissioners do when they get it
3 back, but it goes to each Commissioner, who will sign it, and you
4 know, read it. They'll read it, and then they'll sign it. And
5 any Commissioner can write parts of it.

6 Interestingly enough, the Duke case that was referred to
7 repeatedly, which was that one and only case that I was reversed
8 on by the Court of Appeal -- and I still feel our decision was
9 correct in that -- that was really written by -- part of it was
10 written by another Commissioner; by a Commissioner. It was
11 written by somebody other than I. That was a classic example of
12 my signing on the right side, but a large portion of that case
13 was written by Larry Swezey, who is one of the leading
14 authorities in California on Workers' Compensation law. He wrote
15 the CEB book on the subject.

16 So, that's an example of how -- it doesn't really mean
17 that much that you signed on the right side of the page.

18 SENATOR PETRIS: I thought he was retired. Isn't Swezey
19 retired?

20 MS. LITTLE: Not yet, not yet.

21 Going back to where we were here, I covered the summary
22 of evidence, with regard to the Court of Appeal's comments in the
23 Duke case that we relied on an outmoded line of cases, that is
24 probably one Justice's or one research attorney's opinion that
25 the line of cases was outmoded. And Mr. Swezey certainly didn't
26 feel it was, and he is one of the leading authorities in the
27 State on the subject. And, you know, I would concur that it's
28

1 still good authority, but I don't think that was a real issue in
2 the case.

3 I personally think that the -- go ahead.

4 SENATOR PETRIS: Are you talking about the Duke case?

5 MS. LITTLE: Yes, the Duke case.

6 SENATOR PETRIS: That was written by Carl Anderson, well
7 known up here in Sacramento.

8 MS. LITTLE: Court of Appeal case.

9 SENATOR PETRIS: He represented the District Attorneys
10 Association for years and then went to the bench.

11 I noticed that was concurred in by the other two. So at
12 least there were three, I guess, that thought it was -- he seemed
13 to emphasize that point, that these cases are outmoded and
14 outdated.

15 I don't understand the term "writ something" cases. I
16 don't know what that means.

17 How are they characterized? You just used the phrase.

18 Well, let me find it. Perhaps you want to comment on
19 this. I'm reading from the opinion now -- I'm not reading from
20 the opinion yet. I've got to find that page.

21 "We question the Board's action in
22 relying on outmoded writ-denied
23 cases rather than current authority
24 which recognizes that consideration
25 must be given ..."

26 et cetera, et cetera.

27 It's the "writ-denied" thing that I don't understand.
28

1 MS. LITTLE: I assume they're referring to cases in
2 which there was an Appeals Board decision and a Petition for Writ
3 of Review in the Court of Appeal, and the Court of Appeal denied
4 the writ. I think that's what they're talking about.

5 In other words, the last decision would have come from
6 the Appeals Board. I think that's what they mean by
7 "writ-denied" on that circumstance.

8 In talking about -- I'll talk about the Duke case in a
9 little bit. I don't want to get into details of it, because we
10 have filed a Petition for Rehearing. I think it would be
11 inappropriate, and the Board filed the petition, so I think it
12 would be inappropriate for me to discuss the details of the case.

13 I can give an analogous situation. I don't know if you
14 want one, you know. But it's my personal feeling that the Court
15 in that case confused the issues of injury and permanent
16 disability. So, I still believe our decision in that case was
17 correct.

18 Again, going back to Mr. Rabine's testimony as to what
19 the Applicants' Attorneys looked at, they looked at what is
20 essentially about 175 reversals. There were two batches of cases
21 that were sent over. There was a large overlap between the two
22 batches of cases. They weren't just ones where I was the,
23 quote/unquote, "lead author," as I've already described. They
24 were all the cases in which I had participated in which we had
25 reversed the decision of the Workers' Compensation judge, in
26 essence.
27
28

1 There were no cases in that pile in which we had
2 affirmed the decision of the Workers' Compensation judge, so it
3 wasn't exactly a random sampling. And it also only constituted
4 about 14.5 percent of my decisions.

5 I'm assuming they looked at all of them and that's what
6 was turned over.

7 As Mr. Rabine pointed out, the Applicants' Attorneys, in
8 reviewing those cases, did not have the whole record in front of
9 them. All they had was the opinion. And it's pretty difficult
10 to, I think, review the entire record when you don't have it in
11 front of you, since it's difficult for me here to discuss certain
12 cases when I haven't had an opportunity to review the record.
13 So, I don't know where their determinations are coming from.

14 One other point that I would make is that Section 3202
15 of the Labor Code requires that we give -- that the laws be
16 liberally construed for the benefit of the injured worker.
17 Section 3202.5 says that nothing in Section 3202 shall relieve a
18 party of its evidentiary burden of proof by a preponderance of
19 evidence. And that's essentially that evidence which, when you
20 weigh it against that opposed to it, has the greater probability
21 for it. So, we are required to reweigh the evidence. That's
22 something that we have to do under the Code.

23 It's also a standard set forth in Section 65705 of the
24 Code. So, it is our job to reweigh the evidence, and it's our
25 job to reverse the cases if we feel that they're wrong.

26 And again, you know, two credibility determinations out
27 of 1200 cases does not seem to me to be terribly substantial.
28

1 Mr. Cantrell made the same points about these two cases,
2 discussing them at length.

3 The Hurlburt case, I don't recall that case. Without
4 reviewing the file, I couldn't comment on the specifics of it. I
5 have some recollection that it involved somebody who was securing
6 premises, and the issue was whether he was securing the premises
7 for the benefit of his employer. He was called up by a relative
8 of somebody he had been living with, if I recollect correctly,
9 and asked to please come over and secure the premises because
10 somebody had been shot.

11 Well, I think our feeling in that case as to what I can
12 remember was that we didn't believe this was for the employer's
13 benefit. So, this was not something arising out of in the course
14 of the employment, and I believe that was the reason we reversed
15 the decision. It wasn't a credibility determination as such as
16 to what he testified to, but whether, at least in that regard,
17 but as to whether there really was any benefit running to the
18 employer, and therefore whether it arose out of his employment
19 and was compensable, therefore, as an industrial injury.

20 The Albrecht case was not a case which we provided to
21 the Rules Committee, so I don't recall that case. I can only
22 state, as far as the penalty is concerned, that the Supreme Court
23 in the Galamore case has said that the penalty must be
24 reasonable, and I would assume we found that in that particular
25 case it was not in the context of what was going on in that case.

26 And finally, I would just note once again that 97
27 percent of the cases I participated in, there's been unanimity in
28

1 the decisions. So, in 99.5 I've been in the majority, so I don't
2 think I'm particularly unique on this Board.

3 Are there any questions?

4 CHAIRMAN ROBERTI: Any questions of Ms. Little?

5 SENATOR MELLO: Mr. Chairman.

6 CHAIRMAN ROBERTI: Senator Mello.

7 SENATOR MELLO: One of the things that you just said
8 recently, referring to me, you referred to a private conversation
9 we had in my office this morning, and you answered it then.

10 I think the fact that you restated the question here was
11 improper.

12 MS. LITTLE: I apologize.

13 SENATOR MELLO: I gave you an opportunity to meet with
14 me. I don't have to do that.

15 But I think our discussions are private in my office,
16 and I personally don't like even revealing what we talked about
17 here, at least your side. It would leave the allegation that I
18 said something that probably would be construed to be improper.

19 MS. LITTLE: Well, I apologize. I didn't mean anything
20 improper.

21 SENATOR MELLO: You don't have to apologize.

22 Mr. Chairman, what I'd like to request the Committee to
23 do, because we've had reference here made over some 200 cases,
24 that I'm not privileged to have them here. I don't know whether
25 Senator Petris has reviewed them or not.

26 I'd like to ask the Committee if we could put this over
27 for one week for vote only, and I would ask Nancy Michel if she
28

1 could make available to me these cases which were discussed here
2 today. I would like to have the privilege of looking them over.

3 CHAIRMAN ROBERTI: We've put it over a number of times.

4 I don't object to putting it over after hearing the
5 testimony on both sides, and it's a difficult decision.

6 SENATOR MELLO: Her date is July, so one week --

7 CHAIRMAN ROBERTI: I'd be glad to accommodate you,
8 Senator, and I will if my vote is concerned, but I'm inclined to
9 vote for confirmation, just to let everybody know.

10 Ms. Little has made a number of decisions that I,
11 myself, might not have made, but they're the sort of hard cases
12 that just cannot be hard alone if you're trying to make a
13 decision about a judge, or about a Workers' Compensation Appeals
14 Board member.

15 So, I'd be very happy to review those cases and put it
16 over for a week, but there'll have to be an awful lot of very
17 strong evidence for me to --

18 SENATOR MELLO: I'm not asking anyone to change their
19 vote. I'm merely asking for the privilege --

20 CHAIRMAN ROBERTI: -- for me personally to change my
21 mind.

22 I respect very much the organization that's primarily
23 opposed to Ms. Little. They have a great record in supporting
24 injured workers, but I don't think the case has been established,
25 in my own mind, to deny this particular member confirmation.

26 Her last words are that she is not particularly unique,
27 and I haven't heard anything that makes her particularly unique,
28

1 or particularly arbitrary, or particularly willful in making
2 these decisions.

3 SENATOR MELLO: Mr. Chairman, I'm not asking for this --

4 CHAIRMAN ROBERTI: I'll be glad to put it over for a
5 week.

6 SENATOR MELLO: Let me state, I'm not asking you to
7 change your vote, or anyone that's here.

8 I just think that the matters that were presented here
9 are over and above what we have in our own files here, and I
10 would just like to look randomly through some of them, if I
11 might.

12 And one week without any discussion, just for vote only,
13 and then --

14 CHAIRMAN ROBERTI: Is there any objection to putting it
15 over for one week, no testimony?

16 Ms. Little, I guess, should be here in case the
17 Committee has questions of her; however, there'll be no
18 testimony. I guess it's to review in particular the
19 controversial cases that were brought before us.

20 Is there any objection?

21 SENATOR CRAVEN: I really don't know.

22 Could you tell me in succinct terms --

23 CHAIRMAN ROBERTI: Senator Mello's concern --

24 SENATOR CRAVEN: -- what advantage accrues?

25 CHAIRMAN ROBERTI: -- is that a number of cases have
26 been raised, on which we don't have the full record, at least
27 anything other than a synopsis of, and they have been important
28 cases. I don't dispute that.

1 SENATOR CRAVEN: Yes, and what would be the difference?

2 CHAIRMAN ROBERTI: He wants to put it over for a week so
3 we'd have a chance to review some of these cases.

4 SENATOR ELLIS: All 1200 of them?

5 SENATOR CRAVEN: You know, of course, I would, frankly,
6 I would like to see us get it out of here this evening. I think
7 going through this --

8 SENATOR MELLO: Go ahead and make a motion. What the
9 heck.

10 I mean, one Member asks for something, and everybody
11 else jumps on you.

12 SENATOR CRAVEN: No, no, no. I don't mean to jump on
13 you. If I want to jump on you, I'll use a different tone of
14 voice. It's not hard to tell when I'm jumping on somebody.

15 SENATOR MELLO: One Member can't ask for a privilege --

16 SENATOR CRAVEN: Well, Henry, my feeling is this, and
17 this is a different tone of voice.

18 My feeling is this. You've got a plethora of cases. Do
19 you mean to tell me you're going to sit down with your legal
20 knowledge and expertise, and you're going to go through those
21 cases, and that's going to make one damn bit of difference?

22 SENATOR MELLO: My legal knowledge is as good as yours.

23 SENATOR CRAVEN: I don't think it is.

24 SENATOR MELLO: Well, that's subjective.

25 CHAIRMAN ROBERTI: Well, let's see. We have --

26 SENATOR PETRIS: Can I get into this?

27 CHAIRMAN ROBERTI: Senator Petris, please.
28

1 SENATOR PETRIS: I don't intend to read 200 cases, but
2 he said cases cited in the letter, which is a lot smaller number.
3 If they're available, I'll try to read them.

4 But whether I go into them or not, I think when Senator
5 Mello makes that request, we ought to honor it. We've done it
6 many times for the rest of us, including for me. I mean, if
7 we've done it for me --

8 CHAIRMAN ROBERTI: Senator Mello moves --

9 SENATOR MELLO: No, I don't want to move it, no.

10 CHAIRMAN ROBERTI: Senator Petris moves --

11 SENATOR PETRIS: I'll move it.

12 CHAIRMAN ROBERTI: -- that the confirmation of Donna
13 Little to the Workers' Compensation Appeals Board be put over for
14 one week for vote only.

15 Secretary will call the roll.

16 SECRETARY WEBB: Senator Ellis.

17 SENATOR ELLIS: Aye.

18 SECRETARY WEBB: Senator Mello.

19 SENATOR MELLO: Aye.

20 SECRETARY WEBB: Senator Petris.

21 SENATOR PETRIS: Aye.

22 SECRETARY WEBB: Senator Craven.

23 SENATOR CRAVEN: Aye.

24 SECRETARY WEBB: Senator Roberti.

25 CHAIRMAN ROBERTI: Aye.

26 The vote is five to nothing. We'll take this up next
27 week, first order of business after reference of bills, for vote
28 only.

1 SENATOR CRAVEN: Just vote only? No testimony?

2 CHAIRMAN ROBERTI: No testimony.

3 I suggest that Ms. Little be here.

4 If we want testimony, of course, we'll call it forward.

5 The attorneys who have come forward in regard to the cases that
6 were presented to us, I suggest they be here, but not necessarily
7 ready to testify. If we have questions, we will ask.

8 MS. LITTLE: Can I get a copy of that letter that's been
9 referred to?

10 CHAIRMAN ROBERTI: We'll be glad to give you a copy of
11 the letter. The Secretary of the Committee will give Ms. Little
12 a copy. We'll make sure to provide you a copy of the letter.
13 She has my copy now.

14 (Thereupon this portion of the hearing
15 of the Senate Rules Committee was
16 terminated at approximately 5:10 P.M.)

17 --oo0oo--
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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

27th day of May, 1988.


EVELYN MIZAK
Shorthand Reporter

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APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR JIM ELLIS

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

ALSO PRESENT

DONNA A. LITTLE, Commissioner
Workers' Compensation Appeals Board

EDWIN H. FINSTER, Member
State Water Resources Control Board

ROBERT W. STRANBERG, Chief
Division of Occupational Safety and Health
Department of Industrial Relations

PATRICK CHIODO

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P R O C E E D I N G S

--oo0oo--

SENATOR CRAVEN: Governor's Appointee for vote only. It was, I suppose, last week that we had the opportunity to hear from Donna A. Little, who is a Commissioner, Workers' Compensation Appeals Board. And the Members, or some of them, of the Committee had an opportunity to interrogate Ms. Little. Today is the time set aside for vote only on this item pending.

Am I correct in that, Pat?

SECRETARY WEBB: That's correct.

SENATOR CRAVEN: Very well.

Do I have a motion?

SENATOR PETRIS: Can we ask one question?

SENATOR CRAVEN: Yes.

SENATOR PETRIS: Did Senator Mello want to ask any more questions?

SENATOR CRAVEN: I don't know that he wanted to ask more questions. He said that he wanted to study some of the cases; I recall that.

Well, let's hold it, then.

SENATOR PETRIS: I don't know whether he does or not.

SENATOR CRAVEN: I don't know that we should have more questions, but if Senator Mello wants to make some comment based on what he has discerned from his reading, fine.

Let's hold that, if we may. Ms. Little, would you just kind of stand at parade rest there until we resolve this. Thank you.

(Thereupon the Committee acted upon
legislative matters on the agenda.)

SENATOR CRAVEN: We have Governor's Appointees appearing
today.

Pat, is there any reason we may not proceed on that?

SECRETARY WEBB: No.

SENATOR CRAVEN: Very well, the first is Edwin H.
Finster, Member, State Water Resources Control Board.

Good afternoon, Mr. Finster.

MR. FINSTER: Good afternoon, Mr. Chairman.

SENATOR CRAVEN: Mr. Finster, we ask all of those
Appointees of the Governor to tell the Members of the Committee
why they feel that they are qualified for the position to which
they have been nominated.

MR. FINSTER: Yes, Mr. Chairman.

I represent on the Board the classification of
registered civil engineer in the sanitary engineering position.

I was appointed to the Board in August of 1974, was
confirmed and have served on the Board just short of four years
-- a little over 3½ years. And I do meet the requirements or the
qualifications set forth in the Porter-Cologne Act.

SENATOR CRAVEN: How many different categories are there
on the State Water Resources Control Board?

MR. FINSTER: There are five. They're all classified.
One is the sanitary engineer that I fill. The other is
registered engineer with water quality experience; that's the
Chairman of our Board, Don Maughan. One's an attorney; one is a

1 member at large who represents some water interests; and the
2 other is a member at large that has no specific qualifications.

3 SENATOR CRAVEN: I see. So in essence, they really are
4 quite exclusive from the standpoint of what they represent, with
5 the exception of the public members.

6 MR. FINSTER: It's well defined in the Porter-Cologne
7 Act.

8 SENATOR CRAVEN: Do either of the Senators have any
9 questions of Mr. Finster?

10 Is there anyone in the audience who wishes to testify
11 either for or against?

12 Here's Senator Mello; we'll ask him. Let the record
13 show Senator Mello is now present.

14 Senator Mello, we are on Governor's Appointees. This is
15 Mr. Finster, Member, State Water Resources Control Board. We
16 have just asked if there's anyone who wishes to make any comment.

17 I'll give you a moment to orient yourself.

18 Senator Petris.

19 SENATOR PETRIS: There's a controversy on the Sacramento
20 River water quality and a Court decision that ordered the Board
21 to do something. The Board, on the advice of counsel, decided to
22 change the plan rather than follow the Court order.

23 Do you remember that?

24 MR. FINSTER: That relates to the Regional Water Board.

25 SENATOR PETRIS: That's not yours?

26 MR. FINSTER: That's under our jurisdiction; that's
27 correct.

1 SENATOR PETRIS: Are you being tracked into that?

2 MR. FINSTER: We are tracking it. We get into it when
3 it's appealed to our Board, the subject matter.

4 SENATOR PETRIS: Are you in it officially yet?

5 MR. FINSTER: Not -- I have no details at all, nothing.
6 I haven't been briefed or have any knowledge of it at the present
7 time.

8 SENATOR PETRIS: I was wondering what the current status
9 of that might be.

10 MR. FINSTER: I can't answer that question.

11 You're speaking of the rice pesticide and things?

12 SENATOR PETRIS: I think that's what it is, yes.
13 Cutting back on pollution from the rice fields.

14 MR. FINSTER: That's been a continuing problem since
15 I've been on the Board.

16 SENATOR PETRIS: Thank you.

17 SENATOR CRAVEN: Nothing further? Very well, Senator
18 Ellis.

19 SENATOR ELLIS: Move.

20 SENATOR CRAVEN: It's been moved.

21 No further testimony from the audience, and there
22 appears to be none, call the roll.

23 SECRETARY WEBB: Senator Ellis.

24 SENATOR ELLIS: Aye.

25 SECRETARY WEBB: Senator Mello.

26 SENATOR MELLO: Aye.

27 SECRETARY WEBB: Senator Petris.
28

1 SENATOR PETRIS: Aye.

2 SECRETARY WEBB: Senator Craven.

3 SENATOR CRAVEN: Aye.

4 SECRETARY WEBB: Senator Roberti.

5 Four to zero.

6 MR. FINSTER: Thank you, Senators.

7 SENATOR CRAVEN: Thank you very much, Mr. Finster.

8 Congratulations.

9 Let's go back to Item One which we called. Senator
10 Mello, Senator Petris suggested we wait until you arrived to see
11 if you had any comments you wanted to make on Donna Little.
12 Reference was made last week to some of the cases, and I just
13 wondered if you had any thought that you wanted to express?

14 SENATOR MELLO: Thank you, Mr. Chairman.

15 I did review a few of the cases and some of the letters,
16 and came to the conclusion that she sees her position in a very
17 conservative manner. In many cases, the injured workers were
18 given -- if I had been in her position, it would have been
19 impossible for me to substitute my judgment for hers. I think I
20 would be a little bit more compassionate. That's what I find
21 pretty much.

22 I just feel sorry for the people who are injured because
23 of safety programs or whatever. But once they do become injured
24 on a job-related incident, based on the law, I think that we have
25 to look at the cases and try to come up with a conclusion that at
26 least they can survive on. In some cases, I recall one in San
27 Jose where a person got about 42 percent of their earning
28 ability, so they lost about 58 percent of their earnings.

1 I think her philosophy -- and I don't counter this. I
2 think it reflects, as most other appointments do, that of the
3 appointing authority, in this case the Governor. His philosophy
4 is a lot different than mine, but I think that she is carrying
5 out the philosophy, pretty much, of the administration. And I
6 think she's doing it in a way that she feels she's exercising her
7 own judgment.

8 I don't think she's exercising any dishonesty or
9 anything. I think she feels good about what she does. But in
10 looking over just a few of the cases, I feel that each person
11 that she's ruling against comes up with less than what they would
12 have with a more compassionate person in her capacity. That's my
13 own finding as a result of just looking at a few cases that she
14 has exercised her own judgment on.

15 SENATOR CRAVEN: First of all, I appreciate your review
16 of the cases.

17 Secondly, I would get the impression that you feel that,
18 from the standpoint of the performance of her duty, she has done
19 nothing to violate the charge which she has been given.

20 Your feeling is that you would prefer someone who,
21 perhaps, has a more compassionate view of the situation.

22 Am I correct in that?

23 SENATOR MELLO: I would say in that regard, the charge
24 she was given, according to the law, is one thing.

25 SENATOR CRAVEN: Yes.

26 SENATOR MELLO: I think she fails that test, in my
27 opinion, as the law really is written for the protection of
28

1 injured workers, trying to get them a degree of compensation that
2 is fair, based on the loss of earnings.

3 Your comment, I think, is more applicable to the
4 appointing authority. I think she fulfills the task which the
5 Governor expects her to carry out in this case, and I can't find
6 fault with that.

7 I know he would not appoint me there, and I would not
8 want to serve there. I think I would probably give -- I think
9 I'm a softie for people who have lost their earning ability for
10 whatever reason. I feel I would want to be a little bit more
11 compassionate.

12 I do appreciate the Committee giving this week delay.
13 It didn't come easy. I know Senator Craven opposed it and so did
14 others, and it had to be put to a vote. When a Member asks for
15 time to do more research, unless there's some evidence that it's
16 done without good intentions, then I think that's a different
17 story. I had every intention of trying to fulfill my duties as a
18 Member of the Rules Committee, which I feel that I have done.

19 I'm ready to put the matter before the Rules Committee
20 at this point.

21 SENATOR CRAVEN: Senator Ellis, do you have any comment?

22 SENATOR ELLIS: Move the appointment.

23 SENATOR CRAVEN: Very well, it has been moved for vote
24 only.

25 Call the roll.

26 SECRETARY WEBB: Senator Ellis.

27 SENATOR ELLIS: Aye.
28

1 SECRETARY WEBB: Senator Mello.

2 SENATOR MELLO: No.

3 SECRETARY WEBB: Senator Petris. Senator Craven.

4 SENATOR CRAVEN: Aye.

5 SECRETARY WEBB: Two to one.

6 SENATOR CRAVEN: Let's hold the roll open for Senator
7 Roberti, if we may.

8 Robert W. Stranberg, Chief, Division of Occupational
9 Safety and Health, Department of Industrial Relations.

10 Good afternoon, Mr. Stranberg.

11 MR. STRANBERG: Good afternoon, Mr. Chairman, Members of
12 the Committee.

13 I'd like to read a very short statement.

14 SENATOR CRAVEN: Fine.

15 MR. STRANBERG: I am Robert W. Stranberg, Division of
16 Occupational Safety and Health.

17 I believe that my professional background in the field
18 of safety and health qualifies me for the position of Chief of
19 the Division.

20 I've devoted over 32 years to the protection and safety
21 and health of military and civilian workers. Before joining
22 Cal-OSHA in 1973, I served 29 years in the United States Air
23 Force. In 1955, as a Captain, I began investigating accidents as
24 part of my additional duty responsibilities as a combat troop
25 pilot. From 1958, when I began specializing in the field of
26 accident prevention as the flight safety officer, to the time
27 that I retired from the Air Force in 1971 as a Colonel and Chief
28

of the United States Air Force Space and Missile Systems Organization, safety and health in the workplace has been my -- a personal commitment of mine.

During the last 15 years of my military career, when I was principally involved in the field of military safety, I was promoted to positions requiring greater professional, educational, managerial, and supervisory responsibilities.

In 1973, I started my professional civilian career in health and safety by becoming a compliance safety officer in the Division of Industrial Safety in Los Angeles. During the last 15 years of my tenure with the State, I've held a number of positions of varying duties and responsibilities. In 1976, I was promoted, sent up to San Francisco to the headquarters as a Staff Services Manager. In '79, I was promoted to Principle Safety Engineer. In '83, I was promoted to a Regional Manager here in Sacramento. In 1984, I was appointed Deputy Chief, and after the Chief Valoff retired, I was appointed Chief of the Division in 1986.

For the 15 years that I have worked my way through the various levels of the Division, I have worked cooperatively with legislative staffs, labor-management groups, and federal OSHA for the better protection of the working people of California.

As I stated earlier, I have 32 years of safety and health experience with the Air Force and with the State of California. In both sectors I began at the field level and was promoted to the Chief's level.

1 After the decision to return Cal-OSHA to federal OSHA, a
2 decision that I was not party to -- it was made by the
3 administration -- I was put to the task of implementing the
4 mandates of the program within the very strict budgetary
5 boundaries given.

6 Subsequent to the administration's decision, I took
7 actions that augmented the Division by requesting and obtaining
8 additional positions for the Division's Consultation Program in
9 their Elevator and Pressure Vessel Units.

10 As you know, at this time there are various scenarios
11 which could again change Cal-OSHA as we know it today. If the
12 program is reconstituted through court or initiative action, I
13 will continue to give my total support and expertise to the job
14 of fashioning an organization which utilizes all of its resources
15 to achieve better and more effective safety and health for
16 working folks.

17 I would like to continue to have the opportunity to work
18 with you, the labor and employer communities, and the workers in
19 California to assure greater safety. I believe the credentials I
20 have set before you today amply qualify me for this position. I
21 hope you will consider me on the basis of my qualifications.

22 Thank you.

23 SENATOR CRAVEN: Thank you very much, sir.

24 Due to the nature of your employment, I have a feeling
25 that there may be one or two questions lurking out there
26 somewhere. Let's begin, if we may, with Senator Petris.

27
28

1 SENATOR PETRIS: There was a hearing in December on this
2 whole CAL-OSHA thing. I noticed you emphasized that you didn't
3 participate in that decision.

4 MR. STRANBERG: In the decision to --

5 SENATOR PETRIS: What was your capacity at the time?

6 MR. STRANBERG: I was the Chief of the Division.

7 SENATOR PETRIS: Were you consulted on that?

8 MR. STRANBERG: I was not consulted as to whether or not
9 the administration should do that. Late in December, I was asked
10 about what I thought some of the pros and cons of the two
11 programs were. I offered that information to my leadership.

12 SENATOR PETRIS: Information or opinion?

13 MR. STRANBERG: Information. I was specifically asked
14 what were some differences in the programs; what I thought would
15 be the effects of the differences in the programs.

16 SENATOR PETRIS: Meaning between the State and federal?

17 MR. STRANBERG: Between the State and federal.

18 SENATOR PETRIS: What are the principle differences?

19 MR. STRANBERG: Well, of course, there are several. I
20 think one of the big things right now is the permit system. Here
21 in California we have a permit system that, at the time when we
22 were dealing with the private sector, required employers to come
23 in and get a permit from us if they're going to build a building,
24 say, 36 feet or more, three stories or higher; if they're going
25 to erect or dismantle scaffolding of three stories or higher; if
26 they're going to dig a trench five foot deep or more. You had to
27 come into the Cal-OSHA program in those days and get a permit
28

1 from us before you could engage in that. The federal government
2 does not have that.

3 There are differences in the -- well, let's see.

4 There's differences in the --

5 SENATOR PETRIS: Penalties?

6 MR. STRANBERG: Well, some. The penalties are somewhat
7 close. Recently, however, we did double our penalties, and our
8 penalty system is generally higher than the federal system.

9 California has several -- about 170 more substances that
10 are in our safety orders that have specific -- what they call
11 TLVs, threshold limit values, that cannot be exceeded for the
12 protection of workers, and the feds do not have that.

13 SENATOR PETRIS: Are you talking about chemicals,
14 toxics?

15 MR. STRANBERG: Toxics, yes.

16 SENATOR PETRIS: The feds, I understand, don't even look
17 at a large number of those. It's not on their check list.

18 MR. STRANBERG: I don't know whether they have it on
19 their check list or not.

20 SENATOR PETRIS: When you say there's 170 more at the
21 State level, what does that mean?

22 MR. STRANBERG: Well, in our -- what we call our Title 8
23 of the California Code, there is a listing of these substances,
24 and the threshold limit value's in there, and we have 170 more of
25 them than the feds do.

26 SENATOR PETRIS: So we're saying the same thing.

27 MR. STRANBERG: I believe so, yes, sir.
28

1 SENATOR PETRIS: I'm also told that the feds really
2 don't prosecute vigorously unless there's some death. Otherwise,
3 they don't do much on the ordinary injuries, which are severe
4 enough.

5 First of all, I understand the statue's a lot weaker,
6 comparing the feds with ours. And secondly, the spirit,
7 attitude, concept of what enforcement is and what it means, and
8 enthusiasm of the people in it, are substantially different.

9 MR. STRANBERG: I suppose the only people that could
10 really answer that would be the feds. Whether or not they'd agree
11 with that statement, I don't know.

12 SENATOR PETRIS: Have you had an opportunity to observe
13 the feds at work?

14 MR. STRANBERG: Yes, I've worked along side of them and
15 recently with the conditions in California.

16 It's been my opinion that they've -- that they are quite
17 stringent. In fact, some of the biggest penalties, as you might
18 have seen around the country where the federal folks are doing
19 business, have been extremely high -- \$3-400,000, I believe it
20 was, in Illinois and Iowa.

21 SENATOR PETRIS: What kind of cases?

22 MR. STRANBERG: It was --

23 SENATOR PETRIS: We're talking about people getting
24 killed; aren't we?

25 MR. STRANBERG: Not necessarily. I think one of the big
26 things -- and I'm no expert on the federal OSHA system -- is the
27 -- what they call their record checks. They place a lot of
28

1 emphasis on the records that are required to be kept by an
2 employer about his accident experience. And where they find
3 cases where the employer has not, knowingly or unknowingly, kept
4 good records of the injuries to his workers, they've come down
5 extremely hard on them, I understand, and the penalties have been
6 extremely high.

7 SENATOR PETRIS: Let's look at a comparison here of the
8 feds at work in California compared to your shop before in the
9 private sector.

10 MR. STRANBERG: Yes.

11 SENATOR PETRIS: From July, '87, when they took over,
12 through March of this year, we have 145 accident inspections and
13 1,086 complaint inspections.

14 MR. STRANBERG: By the federal folks?

15 SENATOR PETRIS: Yes.

16 Now, under California's jurisdiction during the same
17 period of time, instead of 145 accident inspections, there were
18 1,888.

19 Now, I doubt that the information will show that all of
20 a sudden, because the feds took over, the accident rate dropped.
21 That's not the case; is it?

22 MR. STRANBERG: I wouldn't think so.

23 SENATOR PETRIS: If anything, it's gone up. There's
24 more and more activity, or at least it's stayed even.

25 On the complaint inspections, there were 4,565 at the
26 State level, compared to 1,086.

1 Now, if I were a worker in this State, I'd be a little
2 bit nervous. Let me ask you, do you think the worker is safer
3 under the prior system with the State operation, with our State
4 statutes and enforcement, compared with the federal?

5 MR. STRANBERG: I would think that the statistics you're
6 quoting are probably skewed a little bit because of the
7 transition period. The feds, as I understand it, have not --
8 still have not built up to their ultimate strength, and that
9 because they didn't have as many field people, that the number of
10 inspections was, as you probably accurately have stated, is much
11 lower.

12 Another thing, and I must be honest --

13 SENATOR PETRIS: Excuse me.

14 The transition period is part of the problem; isn't it?

15 MR. STRANBERG: Of course.

16 SENATOR PETRIS: It takes them a year or two to come in
17 and gear up.

18 MR. STRANBERG: Absolutely.

19 SENATOR PETRIS: And as a result, they don't have enough
20 people out there. That's part of the problem.

21 MR. STRANBERG: I agree.

22 SENATOR PETRIS: The worker's exposed to these dangers.

23 MR. STRANBERG: Yes, sir.

24 Now another --

25 SENATOR PETRIS: As the head of the shop there, have you
26 caused anybody to make an evaluation, or do you think it's too
27 early, as to how it's working?
28

1 MR. STRANBERG: Well, I would think it's a little early.
2 They haven't had a year yet.

3 We do compare statistics, and I'm sure when we get a
4 year, or perhaps a little bit more under our belt, there'll be a
5 more definitive case made for who's doing what, and how many of
6 these things are being brought down.

7 Another thing, on the complaints, the federal folks --
8 you were asking me earlier about differences -- the federal folks
9 have a little different complaint system that requires generally,
10 generally, that a complainant sign and submit in a written form
11 his complaint.

12 In California, we didn't have that. In California, we
13 would respond even to a phone call. Now, we'd like to get it in
14 writing so it's as clear to us, and we can send out the proper
15 resources, but that could have a little effect on the numbers of
16 complaints serviced.

17 SENATOR PETRIS: I would think so.

18 MR. STRANBERG: Sure.

19 SENATOR PETRIS: It would probably reduce them.

20 MR. STRANBERG: Yeah. The feds will go out on a
21 complaint even if it's in a telephone form based on the severity
22 of the complaint. But by and large, they want to have their
23 complaints signed and written.

24 SENATOR PETRIS: Now, when you were asked to give that
25 information regarding the two systems, was that done in any
26 official written report from you to the Governor?

27 MR. STRANBERG: No, sir.
28

1 SENATOR PETRIS: Was in it conferences?

2 MR. STRANBERG: No, sir.

3 That was sitting around an office in San Francisco
4 talking to my boss.

5 SENATOR PETRIS: Who was --

6 MR. STRANBERG: Mr. Rinaldi and Mr. Simpson, Chief
7 Deputy Director.

8 SENATOR PETRIS: Where did the main impetus for change
9 come from?

10 MR. STRANBERG: The change from the State to federal?

11 SENATOR PETRIS: The pull away, yes.

12 MR. STRANBERG: Well, as I understand it, and I suppose
13 we've read the same thing, that the Governor took a look at the
14 Gann Act, and the monies available, and made a decision that that
15 was a place that money could be saved.

16 SENATOR PETRIS: It was an economic --

17 MR. STRANBERG: That's my understanding, sir.

18 SENATOR PETRIS: There's another area here I'd like to
19 check regarding appeals. It's part of this hearing I mentioned,
20 legislative hearing last year in December.

21 MR. STRANBERG: Yes, sir.

22 SENATOR PETRIS: There was a discussion devoted to the
23 dismissal or settlement of a large number of cases that were on
24 appeal before Cal-OSHA Appeals Section. A lot of them,
25 apparently, involved either potential or actual criminal
26 prosecution. They were a pretty serious level of problem,
27 causing deaths or very serious injuries.
28

1 I don't have the numbers, but it seems to allege here
2 that the staff report indicates a substantial number of
3 dismissals after July 1, 1987.

4 I wondered if you could enlighten us on that? It
5 implies that there was a big increase in the number of cases that
6 were dismissed or settled, and often without going back to the
7 originators, the local people, to check it out with them and
8 clear it with them.

9 MR. STRANBERG: Well, sir, when disengagement came upon
10 us, we had roughly 325 cases under appeal to be processed. Those
11 cases, some went back as far as 1982. They were -- they were
12 given an initial look by the legal staff that was available to
13 us. And as you know, after the announcement, our people started
14 looking for other jobs, and the attorneys were quite successful
15 in finding other employment. And eventually, we got down to no
16 attorneys in the Division.

17 SENATOR PETRIS: That probably made some people very
18 happy.

19 MR. STRANBERG: Perhaps it did; I don't know.

20 We then had to go to find other resources. And I went
21 to the Director, and Chief Deputy Director was the primary person
22 involved with this, and we started another look at these cases to
23 see if any of them could be settled without any kind of prejudice
24 against anyone.

25 I was asked to bring the cases to the Chief Deputy
26 Director, who is an attorney, a labor attorney, and review those
27 cases. I provided technical input to those cases, and we looked
28

1 at approximately a hundred of them. It was a very time consuming
2 operation.

3 There were decisions made by the -- by this attorney
4 that said that this case should be dismissed, this one shouldn't
5 be, this one dismiss. He went through them --

6 SENATOR PETRIS: His job there, he wasn't being an
7 attorney on that job. He was being an administrator. In other
8 words, he didn't have a hands-on knowledge of those cases?

9 MR. STRANBERG: Not other than the case files that we
10 reviewed. He had all the case files on these and --

11 SENATOR PETRIS: He picked some that he felt could be
12 dismissed?

13 MR. STRANBERG: Yes, sir, based on his legal experience,
14 I would assume.

15 SENATOR PETRIS: I understand that the Chief Counsel of
16 the Agency had selected those cases as ones that should not be
17 dropped.

18 MR. STRANBERG: Well, I think there was very few like
19 that. The Chief Counsel, as I said, was -- did make the first
20 review of the cases and made suggestions to them. Those were
21 again looked at.

22 It's my recollection that not many of the cases that the
23 Chief Counsel decided should be retained were dismissed by the
24 Chief Deputy; some were. Some were; there isn't any question
25 about it; some were, yes, sir.

26 SENATOR PETRIS: Was that decision also based on saving
27 money, or was it based on having such a small legal staff left?
28

1 MR. STRANBERG: It was in the interest of getting to the
2 important cases, or the bigger cases, the ones where we could
3 find the witnesses that were necessary to support the case.

4 A lot of our people left. As you know, our people
5 usually testify during an appeal hearing as to what they saw, and
6 how much, and who, and what and where. And our people were going
7 to the four winds. We could get some of those people back and
8 did, but we couldn't get them all back. Our people went as far
9 away as Puerto Rico, I understand, to get other jobs.

10 SENATOR PETRIS: Do you feel comfortable with the net
11 result of all that?

12 MR. STRANBERG: I don't know if comfortable is the right
13 word.

14 SENATOR PETRIS: Do you feel happy about it?

15 MR. STRANBERG: No, no.

16 SENATOR PETRIS: Do you feel unhappy about it?

17 MR. STRANBERG: Well, under the circumstances, I believe
18 it was the best that could be done.

19 SENATOR PETRIS: I'm talking about the circumstances,
20 and bear in mind the mission of the Agency.

21 MR. STRANBERG: I do intend --

22 SENATOR PETRIS: You were there to protect the safety of
23 the workers.

24 MR. STRANBERG: Yes.

25 SENATOR PETRIS: So along comes an order based on saving
26 money, which is unfortunate. You're trying to save money, you
27 know, so you announce to the world that you're going to detach,
28

1 the feds are going to come in. So naturally the staff people
2 figure they're going to get fired, so they might as well go out
3 and get themselves another job.

4 And as a result, you can't proceed with the cases even
5 if you had enough money left, it sounds like.

6 Now, that makes me feel very uncomfortable, very
7 unhappy. It's just contrary to the statutory mission of the
8 Agency.

9 I imagine that reflects your feelings, too.

10 MR. STRANBERG: I generally agree with you. We, as I
11 say, did the best we could with what we had.

12 SENATOR PETRIS: The registration program for asbestos
13 stuff is behind schedule. It was supposed to be in place January
14 of last year.

15 Is that catching up now?

16 MR. STRANBERG: Yes, sir. That program's in good shape.
17 We have 90 registered contractors and seven, maybe eight -- last
18 I checked, it looked like another one's coming on line --
19 consultants. So, we have got 90 registered contractors in the
20 State.

21 SENATOR PETRIS: Now, that's for the purpose of removing
22 the stuff from public buildings, I guess, or from any place?

23 MR. STRANBERG: From any building, yes, sir.

24 SENATOR PETRIS: Who's going to monitor that, the
25 federal people?

26 MR. STRANBERG: We turn over a copy of every
27 registration to the federal folks so that they can monitor on a
28 discretionary basis whatever they want to do with it.

1 We -- if we get information from any source that an
2 unregistered contractor is involved with asbestos removal, or in
3 any way disturbing asbestos where the requirement would be for
4 registration, we turn that over to the local district attorney,
5 and we have done so.

6 SENATOR PETRIS: How many cases?

7 MR. STRANBERG: Three that I know of, sir.

8 SENATOR PETRIS: Which counties?

9 MR. STRANBERG: I think it's Placer County, L.A., and
10 Alameda. Mr. Jenson in Alameda was the one we turned over one
11 not over a month ago, a month and a half ago.

12 SENATOR PETRIS: I don't know a Jenson there. We used
13 to have a D.A. named Jenson. He's now a distinguished federal
14 court judge.

15 You don't mean him?

16 MR. STRANBERG: No, sir.

17 SENATOR PETRIS: That's one of the very big areas of
18 difference.

19 MR. STRANBERG: Yes.

20 SENATOR PETRIS: The standards are ten times greater at
21 the State level than the federal level, I understand.

22 MR. STRANBERG: That's right. It's two fibers versus
23 their two-tenths fibers.

24 SENATOR PETRIS: How can that be justified?

25 MR. STRANBERG: Well, we currently have --

26 SENATOR PETRIS: You know, we're dealing with the number
27 one killer right now, close to it. All the people dying from
28

1 asbestos going way back to World War II. It's been described by
2 people who've studied this as the biggest killer in industrial
3 activity in the country.

4 MR. STRANBERG: Terrible stuff.

5 SENATOR PETRIS: We're going in here now and dropping
6 ourselves from a certain standard to one ten times less adequate,
7 let's say.

8 MR. STRANBERG: Well, we aren't dropping it.

9 SENATOR PETRIS: Well, we're surrendering to them, and
10 they're bringing in their standard, which is --

11 MR. STRANBERG: Their standard is the more stringent
12 one, yes, but we have currently regulations up for public
13 hearing. And I believe it'll be the 27th of June for -- to bring
14 our standard in line with theirs. Our standard will end up .2
15 fibers just like the federal government's.

16 SENATOR PETRIS: I thought it was the other way around.

17 MR. STRANBERG: No, the federal government's standard is
18 10 times more stringent than ours. It's tougher. Ours is two
19 fibers, and the federal government's is .2, so all this time
20 they've had a tougher, more stringent standard than the State of
21 California.

22 We've had one public hearing on -- where we tried to
23 change our regulations, and the results of the public hearing
24 made us go back to do more work on it.

25 SENATOR PETRIS: Go ahead, sir.

26 MR. STRANBERG: Well, it's just that, that our next
27 hearing is coming up, as I say, in late June. And at that time,
28

1 if everything goes right in the public hearing, our standard will
2 come in line with theirs, and it'll be reduced or become more
3 stringent, as theirs is.

4 SENATOR PETRIS: Well then, we've got a major difference
5 of information here. The information I was given indicates just
6 the opposite.

7 Now, I think you're in a position to know that better
8 than I am.

9 MR. STRANBERG: I'd be glad to submit --

10 SENATOR PETRIS: If you tell me it's the opposite, then
11 I accept your word.

12 MR. STRANBERG: Yes, sir.

13 SENATOR PETRIS: I would like to check this out.

14 MR. STRANBERG: I can bring in something to you at your
15 convenience.

16 SENATOR PETRIS: No, you don't have to do that. Your
17 word is good enough. But I am curious about this difference.

18 Now, you have hearings coming up on these proposals, did
19 you say?

20 MR. STRANBERG: Yes, sir, public hearings, Standards
21 Board.

22 SENATOR PETRIS: Is the date set?

23 MR. STRANBERG: I believe it's the 27th of June, sir. I
24 can double-check that for you.

25 SENATOR PETRIS: Now, what is your role going to be in
26 those hearings? Are you going to advocate adoption?
27
28

1 MR. STRANBERG: Absolutely. We have prepared -- my
2 Deputy has prepared the proposed new regulations, and in there we
3 made quite a point of lowering that TL down to .2 just like the
4 feds.

5 SENATOR PETRIS: So we're going to have lower standards?

6 MR. STRANBERG: No, no. It'll be the same. Theirs is
7 .2 now, ours is 2. We're going to lower ours down to theirs; in
8 other words, make it tougher.

9 SENATOR PETRIS: You lower the number of fibers.

10 MR. STRANBERG: Lower the number. Makes it safer for
11 the employees. There's less exposure required.

12 SENATOR PETRIS: Are you taking similar steps in areas
13 where the feds might be higher, the federal standards?

14 MR. STRANBERG: Some. They are not as specific as this
15 one. I'm trying to think of where we might --

16 SENATOR PETRIS: Formaldehyde?

17 MR. STRANBERG: Yes, that's up. Most of our --

18 SENATOR PETRIS: Carbon monoxide?

19 MR. STRANBERG: Yes. Most of our standards you probably
20 know about. We are more stringent than the feds. That's why our
21 program was, perhaps, a little better in those days.

22 SENATOR PETRIS: Yes, I see. It's just in a small area
23 that the federal standard is higher?

24 MR. STRANBERG: Yes, sir.

25 SENATOR PETRIS: Generally speaking, over all, ours are
26 higher?

1 MR. STRANBERG: Well, ours are more stringent and we
2 have more of them.

3 SENATOR PETRIS: Thank you.

4 MR. STRANBERG: Yes, sir.

5 SENATOR PETRIS: Thank you, Mr. Chairman.

6 CHAIRMAN ROBERTI: Thank you.

7 I have some questions. You can stop me if they've been
8 asked, the Members can.

9 In December of 1987, there were legislative oversight
10 hearings. I take it that some citations and penalty reductions
11 were withdrawn.

12 MR. STRANBERG: Yes, sir.

13 CHAIRMAN ROBERTI: What was your role in that?

14 MR. STRANBERG: We did discuss that in some length, but
15 my role was a technical advisor to our Chief Deputy Director, who
16 is a labor attorney, and we reviewed those cases. The ultimate
17 decision to withdraw or not withdraw was his.

18 CHAIRMAN ROBERTI: So that was his decision. You did
19 not make it?

20 MR. STRANBERG: Yes, sir. All I did was provide the
21 technical, because I am not an attorney.

22 CHAIRMAN ROBERTI: There's been some concern about
23 implementation of the asbestos standard. I know Senator Petris
24 addressed this.

25 MR. STRANBERG: Well, we touched on it a little bit
26 about the registration and the fact that we have legislation -- I
27 mean, regulations coming up to lower our asbestos standard to
28

1 come in line with the federal standard. That's going to make it
2 more stringent.

3 CHAIRMAN ROBERTI: If Cal-OSHA's reinstated by the
4 voters, do you have plans, contingency plans?

5 MR. STRANBERG: We have discussed on an informal nature
6 some of the things that might have to take place, but nothing has
7 been committed to paper yet.

8 CHAIRMAN ROBERTI: Would you consider referring cases to
9 local prosecutors?

10 MR. STRANBERG: We have, and as I testified to Senator
11 Petris, we've issued or advised three separate district attorneys
12 of contractors performing asbestos related work who were not
13 registered so that they can take appropriate action in accordance
14 with 6509.

15 CHAIRMAN ROBERTI: Would you have contingency plans on
16 enforcing Prop. 65?

17 MR. STRANBERG: To a degree, as it fits into the
18 occupational area. You know, Prop. 65 is DHS's primary
19 responsibility, as I understand it, but we have many of those
20 same substances for which we have the threshold limit values that
21 we would enforce in the workplace, yes, sir.

22 CHAIRMAN ROBERTI: Any other questions? Senator Mello.

23 SENATOR MELLO: Earlier, you said you were not a party
24 to the decision that the Governor made in suspending Cal-OSHA and
25 turning it over to the federal government.

26 Did you in any way protest to him, or tell him that we
27 needed it here in California?
28

1 MR. STRANBERG: I've never spoken to the Governor, no,
2 sir.

3 SENATOR MELLO: He's doing away with the agency that
4 you're the Chief of, and you didn't register any opposition?

5 MR. STRANBERG: Well, I advised, as I said earlier, some
6 of the pros and cons of the actions. And as a Governor
7 Appointee, I did what he said, what he told me to do, and what
8 his mandates to me were.

9 SENATOR MELLO: Well, it seems to me if you're a Chief
10 of the Cal-OSHA program, you know, interested in protecting the
11 safety of the workers of California, you would want to at least
12 have a program where you could be the captain of the ship and run
13 a program that was compatible with what your beliefs might be.

14 I'm surprised that you didn't even register to him that
15 this was a mistake in suspending the program, if you felt that
16 way.

17 MR. STRANBERG: I -- as you know, we still have a
18 Division of over 300 people that go out and conduct inspections
19 in both the public and private -- public sectors and private
20 sectors in our Elevator and Pressure Vessels, and amusement
21 rides, and those types of things, so we still have a very strong,
22 ongoing safety and health program in the State that I am in
23 charge of.

24 SENATOR MELLO: But is that funded by the State of
25 California?

26 MR. STRANBERG: Yes, sir, that is funded by the State of
27 California. Generally, the small amount of work, or the work
28

1 that we do in the public sector, has federal funding involvement
2 in it.

3 SENATOR MELLO: So how many staff people were lost
4 because of the suspension of the Cal-OSHA program?

5 MR. STRANBERG: About 287, sir, but there's still just
6 about 300 people left in the Division that I have.

7 SENATOR MELLO: And they are funded through the budget
8 then?

9 MR. STRANBERG: Yes, sir, they are through the budget.
10 We just had a budget hearing, I believe, last week.

11 SENATOR MELLO: When you responded to one of Senator
12 Petris' questions, he said it's the first time I heard the
13 federal standards were higher.

14 I think when federal OSHA came out some years ago, they
15 set a baseline for safety, but they allowed the States to adopt
16 their own programs to build upon. We could not go below --

17 MR. STRANBERG: Had to be at least as effective as the
18 federal.

19 SENATOR MELLO: Yes, then how could you say that we are
20 less, the standards are less in California than they are at the
21 federal level?

22 MR. STRANBERG: Well, because initially, the feds were a
23 little bit higher, or I believe it was the same. Then they
24 lowered theirs, and then we had to take action to brings ours
25 into line with that.

26 That action has been under way, and it hasn't
27 materialized. As I said, it went to public hearing once. It's a
28

1 very extensive revision of one of our regulations, 5208; that's
2 the asbestos regulation, and it required additional work. And
3 that's currently under way, and that's what's going to come to
4 hearing again, I believe, the 27th or the later part of June.

5 SENATOR MELLO: One of the things that I see between the
6 two systems is, I personally think that the standards in
7 California were higher when we still had Cal-OSHA. But what I
8 see happening now is a lack of enforcement.

9 There's far less enforcement of safety standards now
10 than there was before when we had the whole complement, not full,
11 but we had a Cal-OSHA program operating in California. I think
12 that's the difference, the enforcement.

13 MR. STRANBERG: Sure. I believe the federal folks have
14 about a hundred field people right now enforcing their safety and
15 health standards. We had 130 safety engineers and 78 industrial
16 hygienists at our heyday.

17 The feds tell me that their plan is to increase. I
18 think they're waiting to see what happens with the legislative or
19 initiative actions, too.

20 So, you're absolutely right. There is, perhaps, less
21 enforcement going on this instant than had been when we were in
22 full-blown operation.

23 SENATOR MELLO: Now, isn't it also a fact that the
24 injury rate in California, the measurement is the number of
25 injury accidents per -- they use either 1,000 or 10,000
26 employees. It's one of the highest in the nation. We rank
27 either -- I mean, the highest number of injury accidents, we're
28 up at the top 80-90 percent.

1 MR. STRANBERG: Oh, I don't believe it's that high.

2 Strangely enough, in preparation for this hearing, I was told
3 that in the first nine months of this year, that the accident
4 rate in California has gone down one-tenth of one percent,
5 according to the labor statistics books that provide me with that
6 information.

7 SENATOR MELLO: I recall we had a rate of 10.8 or 10.9
8 per whatever the measurement is. If it's gone down one --

9 MR. STRANBERG: Yes, it's not much, but it's going in
10 the right direction.

11 SENATOR MELLO: I just think California, you know, we've
12 dropped to the eighth largest economic power in the world; we
13 were sixth until the devaluation of the dollar. But I think the
14 facts show that we do have a high incident of injury accidents,
15 and yet we're suspending our own safety program in the State.

16 It's not only the enforcements and the charges brought
17 against persons, it's the fact that a good Cal-OSHA program, a
18 good safety program, has a high degree of safety built into it so
19 employers can operate with safe standards; therefore, cutting the
20 injury rate down, and also cutting their own -- people complain
21 about Workers' Compensation Insurance. If they'd only adopt a
22 good safety program, that would do a lot towards lessening it.

23 MR. STRANBERG: Absolutely, I agree with you.

24 SENATOR MELLO: How do you stand on the initiative that
25 just qualified for the November ballot?

26 MR. STRANBERG: How do I stand on it?
27
28

1 SENATOR MELLO: Yes, to restore Cal-OSHA here in
2 California?

3 MR. STRANBERG: If it becomes law, I'll totally support
4 it.

5 SENATOR MELLO: I didn't ask you that. If it becomes
6 law, you took an oath of office.

7 See, I support Prop. 13 now because it's the law, but
8 I'm still not a convert, neither did I support it in 1978.

9 My question is, how do you stand on this issue? Will
10 you be voting for it or against it?

11 I know that you have to support it if it becomes law,
12 because you have to take an oath of office like we do.

13 MR. STRANBERG: To be honest with you, I have not read
14 the initiative yet, so I don't --

15 SENATOR MELLO: Well, let me tell you what it says.
16 It'll restore your department, Cal-OSHA, to the State of
17 California. We'll have our own safety program as we had before,
18 mandated by the voters.

19 MR. STRANBERG: You want to know how I'm going to vote?

20 SENATOR MELLO: Well, I don't want to invade your
21 privacy; I'd just like to know your philosophical feeling.

22 MR. STRANBERG: I'm a big believer in good health and
23 safety programs and anything that promotes accident prevention
24 for workers. And if that does a better job of it, I imagine I'd
25 be for it.

26 SENATOR MELLO: So you don't know at this point.

27 MR. STRANBERG: I haven't read it in detail.
28

1 SENATOR MELLO: You don't have to read it in detail.
2 The question is, do we have Cal-OSHA or don't we.

3 I think that you probably enjoy being the operating
4 officer and chairman of the board of Tucker Automobile Company.
5 I think it's an auto that you probably remember; I know I do and
6 Senator Petris does. Younger people like Senator Roberti don't
7 remember it.

8 But rather than being out there with an ongoing
9 full-fledged safety operation --

10 MR. STRANBERG: Sure.

11 SENATOR MELLO: I really think we're going backwards in
12 California on safety. We're going backwards on a lot of our
13 programs that are really in the public interest.

14 To think that this initiative qualified in such a short
15 period of time shows that people in California are concerned
16 about safety.

17 I mean, I'm a business person. I've been in business.
18 I've paid a lot of insurance rates, and I've finally adopted a
19 good safety program. I saw what was happening when you don't
20 have a good program, and that's one way to cut your rates, and
21 also to spare your own employees from a lot of aggravation and
22 hardships that occur when there are injuries.

23 And here you are, the head and the present head of
24 Cal-OSHA, in a stripped-down version -- and I'm not saying you
25 should take odds with the Governor -- but I would think that a
26 person in your capacity would want to be out there carrying the
27 banner for safety, and urging the voters to adopt and vote for
28

1 the restoration of Cal-OSHA in California. Just think, you'd
2 have 300 more staff people back.

3 I know the transcriber can't write down when you nod
4 your head in the affirmative.

5 Thank you. I hear what you say.

6 CHAIRMAN ROBERTI: Is there any opposition in the
7 audience? Please come forward.

8 MR. CHIODO: My name is Patrick Chiodo. I own Superior
9 Mining and Engineering. I'm a miner. I'm an explosives
10 engineer. I have four licenses issued by Mr. Stranberg's agency.

11 I am a State-licensed safety representative. That means
12 I can take jobs on Metro Rail or tunnels and represent the safety
13 of the workers. I am a State-licensed gas tester, and I am not
14 very well versed at talking, so I'm going to just have to go off
15 the top of my head.

16 Mr. Stranberg does not monitor anything. His Agency
17 does not monitor any more.

18 Recently, in January, I was injured by a toxic gas
19 exposure at the Department of Water and Power. And it took his
20 Agency four months to investigate the accident. And the only way
21 it was investigated is because I knew some of the head people in
22 the Van Nuys office and threatened to go to Assemblyman Floyd.
23 And an investigation ensued.

24 Four days after my accident, the Department of Water and
25 Power flooded a seabay with six men in there. Almost drowned
26 them. There was no subsequent investigation or report on this.

27
28

1 There's no reporting of accidents. Sure, the figures go
2 down. The figures will go down if there's no reporting. If you
3 don't write the stuff down, you can't do your actuarial tables.

4 Okay, contingency plans for OSHA, there is none. Mr.
5 Stranberg has done a very, very efficient job. I mean, very
6 efficient on destroying a good agency.

7 Right now, I have 45 percent less lungs, and 20 percent
8 less use of my leg, and I have a little memory problem because of
9 this gas. It would never have happened if he hadn't chased out
10 some of the best people in the safety agency.

11 Now, I can't speak for the Sacramento area, but I can
12 speak for the Van Nuys area, the Long Beach area, Santa Ana area,
13 and the San Bernardino area. I know personally, I was sitting in
14 Byron Eskanian's office one day, when this man chastised that man
15 so bad that he took an early retirement. Chastised him because
16 Byron refused to do something that was illegal. Mr. Stranberg
17 told him not to issue no more blaster's licenses, no more safety
18 rep. licenses -- You did. I was in the office and I heard -- and
19 no more gas tester's licenses. And Byron refused to do it
20 without a direct order in writing. It took Mr. Stranberg three
21 months to send that order down. In the meantime, there was no
22 licenses given out for blaster's licenses, or anything. Nobody
23 can get them.

24 Now this State is one of the few States that licenses
25 the use of explosives through competency tests, also gas testing,
26 which many of you people aren't aware of, is used in underground
27 mines and tunnels, such as Metro Rail, which I have just finished
28

1 a job as safety representative on Metro Rail. And they're having
2 no end of trouble with contractors, and the workers are getting
3 hurt incessantly. Metro Rail has a higher than normal accident
4 rate due to the fact that there's no enforcement of safety rules.

5 According to PDC, which is the managing director
6 overseeing the project, they are supposed to enforce either the
7 fed OSHA rules or the Cal-OSHA rules, whichever one is the more
8 stringent, according to the safety and security manual. Well,
9 neither one of them have any teeth to enforce any of it.

10 Mr. Stranberg recently, in the last couple of days,
11 issued an order to somebody in the Mining and Tunneling Training
12 division not to issue no more gas tester's licenses, safety rep,
13 or blaster's licenses. Now, the gentleman he gave this order to
14 is one of the most qualified testers around, especially in gas
15 testing and safety rep.

16 None of the industrial people that go into the civilian
17 industrial -- that's away from the Tunnel and Mining Division,
18 have any qualifications to even understand what a PEL or LEL or
19 any of these other things are. And he's refusing to issue any
20 more.

21 Now, I happen to carry the highest ratings on all those
22 cards. I've got four blaster's licenses: B, C, D, and E; E is
23 limited, it's nothing. I've got an A license in tunneling and
24 mining; I've got an A license in gas testing.

25 This man systematically destroyed one of the best units
26 you've had around here. I have seen an increase in accidents on
27 all the jobs sites that I've been on. I'm a laborer. I am a
28

1 member of the laborers' organization, the laborers' union. And I
2 will say that Mr. Little, or the gentleman that represents the
3 International doesn't reflect that the union members say. I've
4 been in at least 15 different halls in the last month, waiting
5 for this day. And I've been asking the members what they feel
6 about getting Cal-OSHA back. They want to know when it's coming
7 back.

8 It won't come back if this gentleman continues to do as
9 good and efficient job as he's doing now.

10 Now, there's lots of things that I could say, but one of
11 the main things is, there's more people getting hurt, more people
12 getting injured, and there's going to be more expense to the
13 State, an extreme amount of expense. For one thing, I'm costing
14 the State about \$25,000 this year just for my injury. You didn't
15 have to have that. That would have been \$25,000 you could have
16 put into Cal-OSHA. Because if he had left those qualified people
17 alone when they were there to go out on a phone call, instead of
18 writing a letter, I wouldn't have got injured, and neither would
19 four other people.

20 Right after that injury at the Department of Water and
21 Power, they sent five more people to remove asbestos out of
22 Scattergood Plant. They send them to Scattergood, and from
23 Scattergood they send them down to Harbor. They didn't give them
24 any respirators. They didn't given them any protection
25 whatsoever, and they didn't tell them it was asbestos.

26 The only reason Cal-OSHA went in there is, I called up
27 and raised hell.
28

1 Now, I get calls from people all the time. I'm got
2 5,600 names. Now, the only reason that Mr. Stranberg acquiesced
3 to continue issuing blaster's licenses is because I spent \$7,000
4 of my own money doing a letter writing campaign to ensure that we
5 kept our licenses.

6 I'm the man that caused you the trouble. And I'm going
7 to continue doing that.

8 This State, as far as the labor people -- and I'm part
9 of the labor force -- cannot operate without a Cal-OSHA, period.
10 Fed OSHA has nothing in comparison. Fed OSHA as far as, let's
11 say, mining has only got six pages of small book regulations,
12 similar to your little books you have on your rules. Cal-OSHA
13 has a stack 18 inches high, stacked on top of each other, almost,
14 of rules, regulations and guidelines.

15 They used to have a hold of lot of qualified people to
16 enforce these things. They have no enforcement anymore; none
17 whatsoever, period.

18 Now, I've been following this ever since I was sitting
19 in Byron's office, and I heard the order issued that there will
20 be no blaster's licenses issued. And every time I hear something
21 that's going on, a guy gets hurt, I tell the fellows to call this
22 gentleman. He's been sending them over to Mike Getto. Now Mike
23 Getto, I haven't seen him around any more. All his calls have
24 been going to his subordinates. He doesn't receive his calls.
25 He won't even talk to me, and I've tried. I've even stopped
26 Mr. Rinaldi in the hall and asked him what is he going to do
27 about the licensing of the blasters, which is important, because
28

1 these people are skilled people in the handling of explosives.
2 And Mr. Rinaldi looked at me and says, "I haven't addressed it,"
3 and as he was turning around, he mumbled under his breath he
4 doesn't give a damn about it anyway.

5 Is this an attitude of somebody that you're going to put
6 one of the most important agencies around? An agency that was
7 self-sufficient until somebody systematically and
8 administratively destroyed it against the law. The law states
9 that this agency has to exist. It hasn't been rescinded. He's
10 administratively destroyed it.

11 Now, you still have laws on the books. You have lots
12 and lots of laws. How in the how are you going to administrate
13 them? You ain't got the people to do it. It's taken an
14 industrial hygienist almost four months to look into a gas
15 poisoning that screwed me up for life. Now, how are you going to
16 help people if you continue to let this guy destroy that agency?
17 That's no good.

18 Do any of you gentlemen have any questions?

19 CHAIRMAN ROBERTI: Senator Ellis.

20 SENATOR ELLIS: I don't know anything about blasting, or
21 licensing of people who do it, but could you explain to me what
22 the licensing of the people has to do with the safety of the
23 occupation?

24 MR. CHIODO: Yes, sir. There's plenty there.

25 A lot of people now -- right now there's a rubber stamp
26 attitude of licensing. As a matter of fact, I was informed the
27 other night that somebody down in Long Beach took a test, and
28

1 this is a State test. It was written up by the higher engineers
2 of Cal-OSHA, and the test was handed back to the person and he
3 took it home. Now, this is a test that checks out your
4 competency on knowing which end of the piece of explosive to put
5 in the hole. You don't stick it in your mouth; you put it in the
6 hole. I have seen guys on the job site that didn't know one end
7 of a cap from another.

8 Now, as far as public safety goes on that, or worker
9 safety, I've been on crews with as much as 50 people on the same
10 pattern loading holes, and the guy was incompetent. He didn't
11 know how to do it, and he almost killed himself. It was for
12 California Drilling and Blasting. The guy's name was Dan Shad.

13 SENATOR ELLIS: But did he have a license?

14 MR. CHIODO: He had a license, but it was rubber
15 stamped.

16 SENATOR ELLIS: So, if --

17 MR. CHIODO: He just recently renewed it, sir.

18 SENATOR ELLIS: -- if the Department says, "We're not
19 going to issue any more licenses," wouldn't that cut out those
20 kinds of people?

21 MR. CHIODO: No, that will not cut out the people
22 because then anybody --

23 SENATOR ELLIS: Those kind, the unqualified kind.

24 MR. CHIODO: Well, the unqualified guy's got the
25 license. It's easy to renew it.

26 Right now, an unlicensed person cannot get a license.
27 I've tried to get a license for a couple of people that work for
28

1 me, and I've been stalled: "Oh, yeah, next month," so on and so
2 forth, "Yeah, next week."

3 I also know that a large company that I used to work for
4 as a consultant for explosives called up, and they got tests for
5 three of their people the next day. That's not right.

6 Now, as far as safety goes --

7 SENATOR ELLIS: Did they get the license?

8 MR. CHIODO: Yeah, if you're big and powerful and know
9 who to call. I'm a small operator.

10 Now, as far as safety, if you're not competent to use
11 explosives, and there is background to get an investigation to,
12 if you're not competent to use explosives, what better way is
13 there to hurt people and destroy and maim? A gun?

14 SENATOR ELLIS: I guess I'd have to agree with you,
15 except part of your testimony was, you were faulting Mr.
16 Stranberg on not issuing licenses, and I just couldn't understand
17 how not giving a license had to do with safety.

18 It seems to me if you did not issue a license, those who
19 were currently licensed should be okay.

20 MR. CHIODO: No, because --

21 SENATOR ELLIS: They passed once.

22 MR. CHIODO: The license isn't permanent. It's
23 renewable in five years.

24 Now, I'm fortunate. My license won't run out until five
25 more years. I'm pretty safe unless somebody decides to can it on
26 me.

1 But there are other people out there that have -- their
2 licenses are running out. They're retiring. You've got an
3 attrition rate in the industry. There's new people coming in
4 from out of State, and I've noticed that a lot of the out of
5 State blasters don't go according to the safety rules of
6 California, which is some of the most stringent in the country.

7 SENATOR ELLIS: Are you saying, then, that unlicensed
8 people are blasting?

9 MR. CHIODO: Yes, sir, right now, because they can't get
10 one.

11 SENATOR ELLIS: How can they do it if they don't have a
12 license?

13 MR. CHIODO: That's very easy. You go down -- the local
14 counties, when this originally started a year ago, the local
15 counties -- we went around and polled all the local counties, and
16 they says, "Well, if nobody can get a license, then we're going
17 to have to start issuing county permits on our own." And I asked
18 them, "Why do that? Why not help us keep the licensing program?
19 Then you know somebody's competent." And they says, "Well, if
20 they don't want it, we can't force them. We will have to start
21 our own testing program here."

22 San Bernardino County right now, they have a testing
23 program. It's a minimal program, but at least it finds out if
24 you know which end of the fuse to use; if you're a terrorist; or
25 if you're going to go out and hurt people.

26 Now, there's a lot of sensitive stuff on explosives, and
27 this basically my forte and safety. I'm an excellent safety
28

1 engineer. I've save several people's lives, and I've had two
2 people die in my arms because of some other yo-yo's incompetence.

3 But explosives are necessary to be licensed because the
4 tests perform an integral part in the competency of the blaster.

5 You don't want anybody going out on a freeway project
6 with roads -- working roads right now, blasting next to the road
7 and he doesn't know what he's doing. He overloads the holes;
8 puts too much powder in the hole; doesn't use the right powder;
9 doesn't use the right time sequence. You don't want people doing
10 that. You'll have dead bodies laying all over the freeway. You
11 don't want that.

12 SENATOR ELLIS: I guess your point is, the way you've
13 answered my question is, by not licensing, you have people
14 performing the work who are unlicensed and incompetent.

15 MR. CHIODO: Yes, sir. Not all are incompetent, but the
16 higher majority of incompetents do have the ability to get the
17 powder then.

18 This form of licensing tends to weed out the
19 incompetents, the sloven, the guys that really are dangerous to
20 work with. I've worked with guys that are so dangerous I've quit
21 two jobs.

22 SENATOR ELLIS: What's the penalty for blasting without
23 a license?

24 MR. CHIODO: Penalty for blasting without a license
25 depends upon who gets mad. If the county gets mad, then you can
26 go to jail from anywhere from one to five years for possession of
27 explosives.
28

1 Cal-OSHA's penalty without a license is very minimal.
2 It depends upon who gets hold of it. You can be cited; you can
3 be fined.

4 But if the ATF gets into it, you're getting into about a
5 20-year stretch.

6 SENATOR ELLIS: Do we have State law on it?

7 MR. CHIODO: Yes, we have some State law. I'm not
8 familiar with it right now. I probably have most of all the
9 Cal-OSHA regulations remembered, but to remember them all
10 instantly is hard.

11 SENATOR ELLIS: More than the regulations of Cal-OSHA, I
12 just wondered if we have any State law in regard to handling of
13 explosives without a license?

14 MR. CHIODO: That is Cal-OSHA. That's Industrial
15 Relations Code. It comes under the Industrial Relations Code.
16 As a matter of fact, there's sic different areas on the
17 Industrial Relations Code, Cal-OSHA Code, Mining & Tunneling
18 Code, that state nobody that is incompetent and not in the
19 possession of a State license, you know, a blaster's license,
20 shall not handle or use explosives.

21 SENATOR ELLIS: But you don't remember what the penalty
22 is?

23 MR. CHIODO: No, I don't know what the penalty is. I
24 know there's some substantial penalty in there.

25 Also there's a penalty in there if a blaster hurts
26 somebody. He's up a creek.

27 SENATOR ELLIS: Thank you.
28

1 CHAIRMAN ROBERTI: Thank you very much, Senator.

2 Any other questions?

3 Mr. Stranberg, you may conclude.

4 MR. STRANBERG: Well, I don't believe that I've ever
5 received a phone call from this gentleman. Perhaps. I've never
6 heard of turning him down.

7 But on the licenses, blaster's licenses, we do issue
8 blaster's licenses. We currently issue blaster's licenses, and
9 we've been doing it since the 17th of August.

10 One reason was that there was concern voiced, and
11 rightly so, that blasters were being put out of business because
12 they couldn't buy the powder, the blasting agents, because one of
13 the primary requirements of that is evidence of a Cal-OSHA
14 permit. We do that.

15 I believe that's all I care to say about that issue,
16 sir.

17 MR. CHIODO: May I add to that?

18 SENATOR ELLIS: What is the penalty for blasting without
19 a license?

20 MR. STRANBERG: Well first, we can issue citations with
21 the appropriate penalties. Then it can get to be a misdemeanor
22 and certainly we can revoke the license.

23 SENATOR ELLIS: Without a license.

24 MR. STRANBERG: Yes, I believe it's a misdemeanor, sir.

25 MR. CHIODO: May I add to what Mr. Stranberg said?

26 Mr. Stranberg issued his directive effective June 20th,
27 if I'm correct. And August -- the difference between August and
28

1 June is almost 30 or 40 days where there was no issuing of
2 licenses. And it got down to the point where somebody was
3 putting an extreme amount of pressure on the senior engineer for
4 Cal-OSHA, Byron Eskanian, who was the gentleman who signed these
5 licenses, to either acquiesce to the demands of the Department,
6 or, quote, "Get the hell out."

7 I think I'll conclude there. I think I've done enough
8 damage.

9 CHAIRMAN ROBERTI: Thank you very much, and thank you,
10 Mr. Stranberg, as well.

11 Is there any other opposition in the audience?

12 I don't think I asked for formal support. Is there
13 anybody who wants to testify in support?

14 Do I hear a motion?

15 SENATOR CRAVEN: Move.

16 CHAIRMAN ROBERTI: Senator Craven moves Mr. Stranberg's
17 confirmation.

18 Just on the comments of the prior gentleman, I
19 sympathize with everything he has said.

20 I do think the problem rests more with the Governor's
21 elimination of the program, and I think that's where the main
22 problem lies in my mind, not so much with the Chief of the
23 Division.

24 I might have some difficulties with how he has
25 administered the program, but I think the essential problem has
26 been the elimination of the program. And hopefully, the Division
27 will re-implement and reinstate what we've all felt has been a
28

1 The vote is three to two; Donna Little's confirmation as
2 a Commissioner of the Workers' Compensation Appeals Board is
3 recommended to the Floor.

4 (Thereupon this portion of the Senate
5 Rules Committee hearing was terminated
6 at approximately 3:25 P.M.)

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CERTIFICATE OF SHORTHAND REPORTER


I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

3rd day of June, 1988.


EVELYN MIZAK
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APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR JIM ELLIS

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

PETER F. BONTADELLI, Director
Department of Fish and Game

SENATOR DAN MCCORQUODALE, Chairman
Senate Committee on Natural Resources and Wildlife

MARK J. PALMER, Chairman
National Wildlife Committee
Sierra Club

BOB WILSON
Trout Unlimited

RICHARD SPOTTS
Defenders of Wildlife

GORDON MCNAIR

CAROL FULTON, Executive Director
Friends of the Sea Otter

GLENN OLSON, Western Regional Vice President
National Audubon Society

AARON READ
California Association of Professional Scientists

JOHN J. GRANT
California Association of Professional Scientists

APPEARANCES (Continued)

1
2 CRAIG L. GHIO, President
California Seafood Institute

3 COREY BROWN
4 Planning and Conservation League

5 MARGUERITE DODGIN
Pacific Coast Federation of Fishermen's Associations
6 Golden State Trollers

7 ED STEWART
Californians for Responsible Animal Management

8 JOHN R. GAITHER, County Supervisor
9 Lassen County

10 DOROTHY M. STONE

11 KENT DeCHAMBEAU
California Rifle and Pistol Association
12 National Rifle Association

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: The next item on the agenda is Governor's Appointees who appear today, and we have one appointment, Mr. Peter F. Bontadelli, Director of the Department of Fish and Game.

SENATOR MELLO: Mr. Chairman, might we invite Senator McCorquodale to join with us?

CHAIRMAN ROBERTI: Yes, Senator McCorquodale, the Chairman of the Senate Natural Resources and Wildlife Committee, has asked to join us in the questioning, and we invite him to join us at the dais.

Mr. Bontadelli, we'll ask you what we ask all the Governor's Appointees, and you've been here before, and that is why you feel you're qualified to retain this position?

MR. BONTADELLI: Thank you, Mr. Chairman, for the opportunity to appear before the Rules Committee today.

As I believe you are aware, I was -- I left the Legislature after several years of working here in various staff capacities and joined the Department of Fish and Game in June of 1984. In January of 1986, I became the Chief Deputy Director of the Department and was appointed Acting Director in June of 1987, and subsequently appointed by the Governor in November.

During the four years I have been with the Department, I have come to, I believe, recognize the scope of the activities of that Department and have become deeply involved in much of its operation.

1 I have basically set forth four goals as principle
2 directions that we'll try to work with in the Department during
3 the time that I'm there as Director. The first and foremost goal
4 is the protection of critical habitats for the wildlife resources
5 of the State in a manner that ensures maximum use opportunities
6 for all of the user groups that are involved.

7 The second is an outreach program to those
8 constituencies of the Department which I find daily are varied
9 and growing, and are often in competition with each other or in
10 conflict with each other, to try to establish a positive dialogue
11 out of which we can, hopefully, identify the points of
12 commonality as well as accept the points of differences, and then
13 be able to move on and address the major issues that we can
14 address.

15 The third area is to develop a long-term stable funding
16 base for the Department. Along these lines, the Legislature has
17 been extremely helpful in the last few budgets, and that is
18 combined with a new approach that we're recommending legislation
19 that will be, hopefully, coming to this House shortly from the
20 Assembly.

21 And the fourth area is to reestablish a firm training
22 base for our employees within the Department. We have in my
23 estimation some of the finest professionals in the areas of
24 wildlife management and fisheries management anywhere in the
25 world working for the Department. This has made my job as an
26 administrator and someone who brings groups together to try to
27 set consensus where it's possible, or even where consensus is not
28

1 possible, we can at least try to set a course that is acceptable
2 to many for our directions, as something that we can do. But the
3 training is critical, since many of our people come out of
4 college, for example, with a degree in biology and an expertise
5 in a single field, but not necessarily -- they have not
6 necessarily been exposed to some of the critical things we do,
7 such as review of environmental review documents and some of
8 those activities. Therefore, training programs have to be
9 established, and it's one we have been working on.

10 I am optimistic that the Department is at a crossroads
11 that is a positive option for us, in that we have the chance, I
12 believe, to begin moving forward to work at balancing the
13 resources of the State against the competing needs of the ever
14 growing human population of California. And I believe I can help
15 provide that opportunity for the benefit of the resource and all
16 of our use groups.

17 CHAIRMAN ROBERTI: Thank you very much, Mr. Bontadelli.

18 Are there questions? Senator Mello.

19 SENATOR MELLO: I would start out with a few questions
20 here. The first one has to do with the mountain lion hunting,
21 which the Commission, I guess, approved the hunt.

22 MR. BONTADELLI: That's correct.

23 SENATOR MELLO: Based on the recommendations of the
24 Department?

25 MR. BONTADELLI: That is correct.

26 SENATOR MELLO: And now a judge has set it aside based
27 on the inadequacy of the environmental impact report.
28

1 One of the concerns I've had, and I've been at many
2 hearings where this issue has come up in the Natural Resource
3 Committee and other places, is the validity of the counting of
4 these animals. We reached out and about 2,000 was the total
5 count in California that we put a moratorium on. I personally
6 don't think that has increased very much.

7 One of the members of your staff who handles the
8 counting of mountain lions, I think he counts anything that barks
9 and moves, or is influenced by the moon, or anything else. He's
10 up to some 5,000 or more.

11 I just wonder, is there any way we can get a better
12 count? It seems like we know how many big horn sheep there are;
13 we seem to know how many ducks are flying around, but I think
14 we're way off on mountain lions.

15 So I'd like to know, first of all, about the count. And
16 then secondly, what action do you plan on taking in appealing
17 this judge's decision? Are you going to work to try to reinstate
18 the hunt, which I think very few people in California really
19 support, the hunting of mountain lions, other than the hunters
20 themselves. I think the species, any time the species has been
21 reduced to a low point, whether it's fish or game, I think that
22 we just have to provide the kind of management that will
23 guarantee the survival of this species.

24 I'd like to hear your comments on the mountain lion
25 situation.

26 MR. BONTADELLI: Thank you, Senator Mello.
27
28

1 The issue of the total number of lions is, as you noted,
2 a point of controversy amongst groups on varying sides of the
3 issue.

4 The Department's count is based essentially on studies
5 in limited areas and projected out over habitat, based on
6 literature searches, and studies, as well as the data that we
7 have actually gathered.

8 It is my understanding that the number of miles, the
9 square miles, that we are currently estimating are acceptable
10 lion habitat is 80,000 square miles. And therefore, by looking
11 at the sub units where studies were completed, and projecting
12 over similar habitats, the total number of 5100 was arrived at.

13 In order to try to continue our efforts to verify the
14 count, which is critical, one of the major points involved, we
15 are currently working with the Mountain Lion Foundation and
16 others to see if we can institute some joint studies, working
17 with Dr. Hornocker, who's one of the experts on lions nationally,
18 to establish a set of studies that might provide some more
19 reasonable, or at least more acceptable answers as to the total
20 number of lions.

21 Not being a wildlife professional, I do rely heavily
22 upon the expertise of those in our Department. And based on the
23 best information available, our Department did set the number at
24 -- you were correct -- at about 5100 adult lions, and hence made
25 the recommendation for a hunt.

26 The second question as to where --
27
28

1 SENATOR MELLO: On that point, though, is that 5100
2 based on the credibility of this one person who's in charge of
3 counting?

4 MR. BONTADELLI: No, it's actually based on a variety of
5 different informational things. It includes information on
6 specific collaring in, I believe, four or six different locations
7 in the State in varying habitat types. It also includes
8 information on sightings, on suitability of habitat, and
9 literature searches.

10 SENATOR MELLO: But my point is, one person's charged
11 with collecting all this data. And he or she is the one -- I'm
12 sure it's he -- that makes this count; is that correct?

13 MR. BONTADELLI: Yes, one person pulled it together, but
14 it was verified by others, and others have agreed, internally to
15 the Department, have agreed with that number, Senator.

16 SENATOR MELLO: What's the gentleman's name?

17 MR. BONTADELLI: Dick Weaver had been the primary person
18 working on it in the past.

19 SENATOR MELLO: He's been before Senator McCorquodale's
20 Committee at various times. I know I tried to have him verify in
21 a more specific way, and believe me, I feel that the count is
22 much lower.

23 Now, is he still in charge of that, or are you
24 transferring him over to some other duty?

25 MR. BONTADELLI: Dick is primarily working on the big
26 horn sheep at this time, and we have Terry Mansfield as the
27 primary individual coordinating the activities for mountain lions
28 at the current time for the Department.

1 SENATOR MELLO: Why was Mr. Weaver moved away from
2 mountain lions?

3 MR. BONTADELLI: It had to do with an injury that he
4 sustained in a helicopter accident on a big horn sheep move and
5 the ability to concentrate him in his area of greatest expertise,
6 which is in the big horn sheep.

7 SENATOR MELLO: It had nothing to do with his counting
8 mountain lions?

9 MR. BONTADELLI: No, that was not the basis for the
10 decision, Senator.

11 SENATOR MELLO: Was it in part, in any part?

12 MR. BONTADELLI: Not to the best of my knowledge, but
13 I'd have to check with our personnel to be sure.

14 SENATOR MELLO: If you're to be confirmed to run that
15 Department -- I yield to Mr. Craven.

16 SENATOR CRAVEN: Thank you, Senator Mello.

17 I just wanted to ask a question. Hopefully you didn't
18 answer this before I came back.

19 A lot of the mountain lions are killed in vehicular
20 encounters; is that not correct?

21 MR. BONTADELLI: Yes, the total number of road kills has
22 been running in the neighborhood of twelve to fifteen annually
23 for the last two or three years, based on the information I have.

24 SENATOR CRAVEN: So it's about the same number each
25 year?

26 MR. BONTADELLI: It's been relatively constant for the
27 last couple of years, as near as I -- based on the information
28 that we have.

1 SENATOR CRAVEN: Does that give you any insight into the
2 numbers, or is that just a very arbitrary thing?

3 MR. BONTADELLI: That was one of the factors that was
4 cited as an example of the fact that the lions are considered to
5 be relatively reclusive, and to have that many, it's got to be
6 one of two things, and I've heard the argument made both ways.
7 One is that there are significantly more lions; the other issue
8 is that there are more vehicles in areas where lions are than
9 there used to be. So, I've heard the case made both ways.

10 SENATOR CRAVEN: Both seem to have some validity.

11 MR. BONTADELLI: It is not conclusive in itself.

12 SENATOR CRAVEN: Thank you.

13 SENATOR MELLO: Just to continue on with the mountain
14 lions, from my perspective, I'm known as a hunter. I've got a
15 few guns; I've hunted a few ducks and things like that. But I
16 don't hunt deer or animals because it's just not my enjoyment to
17 want to do that.

18 In order to be a Legislator and vote on issues that say
19 we can either hunt a species or not, we need good information,
20 good data. I think the data that's come out of that Department,
21 even long before you were named to your present position, I think
22 is totally unfounded. If we have to rely on those facts, it's
23 leaves us with a lot of just guessing.

24 Another question on the mountain lion is the fact --

25 SENATOR CRAVEN: Well, Henry, it just occurs to me from
26 what you said, I'm not a hunter, either. But I can remember 38
27 years ago, when I was involved in a counting sense with an animal
28

1 count, deer in this instance; deer aboard a military base, a very
2 large base, Camp Pendleton.

3 We'd get the counts, and invariably there's somebody
4 saying, "There's not that many deer out there. I was out there,
5 you know, with a group of hunters, and we didn't see any deer,"
6 and so forth.

7 Well, I didn't pay much attention to that because, as I
8 told you, I wasn't a hunter.

9 Some years thereafter, ten years later, the County of
10 San Diego, Anzo Borrego Desert, the biggest State-owned park in
11 the United States, noted for the Borrego. Well, you had a hell
12 of a time trying to find one of those big horn sheep. And we'd
13 come back with counts and say, "Well, there's 63 sheep down
14 there," and the people would say, "Well, I tramped over the rocks
15 and rills, and I never saw a damn sheep."

16 So, no matter what happens, Henry, we're going to have
17 that problem, I think. I think it's just indigenous to the
18 situation.

19 SENATOR MELLO: I think there's a variation, but what
20 I'm saying is, I think that they ought to come in a lot closer to
21 reality.

22 I think there's a move on by the people in charge to
23 inflate the numbers to help justify the hunting part. Now, if
24 that's happening, then, if the numbers aren't there, soon it'll
25 be like the dinosaur and other species that will become gone.

26 You see, I'm in favor of hunting, providing the species
27 are managed, and there's enough there for future generations. I
28

1 certainly am not going to be supporting any taking of either fish
2 or game if this is going to extinguish that species. Then the
3 legacy that we leave in our society and our lifetime are those
4 that extinguished part of nature from existing.

5 That's why I'd like to get some pretty good numbers.

6 Now, the other thing I wanted you to pursue was the
7 second part of my question: how does your Department plan to
8 deal with that judge's decision as far as her rejecting the
9 inadequacy of the compliance with the law, and therefore the hunt
10 has been set aside?

11 MR. BONTADELLI: It's my understanding, and this is
12 strictly verbal at this point, since to the best of my knowledge
13 we do not yet have a final order, and until the final order is
14 there, I don't think any decision is correct to be made one way
15 or the other.

16 The Attorney General representing us indicated that
17 there may be some procedural things that could be done that would
18 still allow the case to get back into court for trial on merits,
19 since they interpret it largely as a procedural issue. I have
20 read some press reports which basically have the same point of
21 view that you have, that it is basically a ruling on the merits
22 on inadequacy.

23 Therefore, at this point in time everyone is waiting for
24 the issue of the final order so we have a basis for making a
25 determination. The final determination, however, will rest with
26 the Fish and Game Commission, not the Department, since they are
27 the ones who formally adopted the regulations that are under
28 challenge.

1 Until we have a chance to review what the judge has
2 said, I don't think --

3 SENATOR MELLO: First it was support of hunting of 190
4 lions as stoped by the Fish and Game Commission?

5 MR. BONTADELLI: Based on the information that was
6 provided by the technical experts in the Department, I believe
7 that 190 lions, which is four percent of our population estimate,
8 should they all be taken -- which is highly unlikely of any
9 species, that the total number of permits would actually be
10 filled -- would not have an adverse impact on the population
11 because, Senator, I too share your concern that no animal should
12 be hunted or otherwise put on the brink of extinction. And the
13 number and the way the permit was set up, we do not believe that
14 our recommendation would create that problem for the animal.

15 I appreciate there are many who disagree with that point
16 of view and our numbers.

17 SENATOR MELLO: Will that hunting, if it is approved,
18 allow hunters to use dogs to track the lions and put them up in a
19 tree?

20 I saw a television scene one time where the lion, the
21 cat, got up in a tree, and then this brave person there with a
22 .370 magnum about 20 feet away, shot the animal up in the tree.
23 I thought that was the most cowardly act I've ever seen in my
24 life.

25 MR. BONTADELLI: I appreciate that point of view.

26 The regulations that were adopted did include the use of
27 trailing hounds. Even during the period of the moratorium, the
28

1 use of hounds to tree animals for strictly pursuit and
2 photographic purposes, or anything else, has always been
3 authorized in California, even during the period of the
4 moratorium, on a take.

5 Bear hunting is currently also conducted in the same
6 manner in California, as are hunting for several other species.

7 That particular method of take is one that is used in
8 all the other Western states and was the one that was recommended
9 by those who did support the concept of the hunt.

10 The issue from the Department's standpoint was ensuring
11 that not more than a maximum number of lions be taken, so that
12 the resource would not be adversely impacted. Therefore, once
13 that decision was made and a threshold number was reached, the
14 issue of the precise method of take was left to the normal,
15 traditional methods used in other states; hence, the regulation
16 that was proposed and adopted by the Commission.

17 SENATOR MELLO: So they can shoot them out of a tree
18 then?

19 MR. BONTADELLI: Under the regulations that were
20 proposed, that would have been possible.

21 SENATOR MELLO: If that's hunting -- it's like the
22 people who go up to Alaska in a helicopter and try to corner a
23 grizzly bear and shoot them from the helicopter. To me, that's
24 not hunting.

25 SENATOR CRAVEN: How would you like to see them shoot
26 cows out of moving automobiles? Warner Springs, California.

27

28

1 SENATOR MELLO: A lot of people go out with a bow and
2 arrow, or a hand gun. They take wild boar with a hand gun, and I
3 think that's got a lot more sport to it.

4 SENATOR CRAVEN: Boy, I'll tell you, that's sport,
5 having been chased by a wild boar. Believe me, that's sport.
6 That's courage.

7 MR. BONTADELLI: Senator, I might just clarify one
8 point.

9 The Department's basic view and mine is this. The issue
10 of whether or not the mountain lion was a game mammal was decided
11 through a legislative process and the Governor's veto. Once that
12 was done, the Department then used your basic concern as ours:
13 what was the total number, and were there sufficient to enable a
14 harvest.

15 The biological data presented by the experts in the
16 Department, which you indicated you disagreed with, indicated
17 that the level of hunt authorized was acceptable and allowable
18 without adversely impacting the population.

19 I know that that is not a popularly held view in many
20 areas, but the use of the types and methods thereafter was a
21 choice to the Commission and based on those who had recommended
22 the hunt was what was used.

23 SENATOR MELLO: Of course, he's Governor and he can do
24 what he wants; he vetoed a few of my bills the other day, too,
25 but vetoing a Presley bill, that I supported because it allowed a
26 density factor, and it allowed a lot of things, and also better
27 counting. I know Senator Petris carried a bill about treeing
28 animals here, too, and I know of his concern.

1 I just want to ask one last question, and then others
2 here will no doubt pursue their own line of questioning. That
3 is, the funding of the Fish and Game Department is, in my
4 opinion, truly inadequate because the funds are almost entirely
5 coming from hunters and people who fish, with a small amount of
6 funds that come from some nongame species and federal funds. But
7 I think your total budget is what, about 140 million?

8 MR. BONTADELLI: It's 123 million; about 60 percent is
9 from hunting and fishing revenues. The next largest source,
10 Senator, is about 20 percent from federal funds, predominately
11 again hunting and fishing licenses, for revenues that the federal
12 level subvented. So about 80 percent of our budget is from that
13 source.

14 SENATOR MELLO: The only general fund money we're
15 putting up now is about --

16 MR. BONTADELLI: It's a little under \$9 million in the
17 budget that's proposed both for the current year, and the next
18 fiscal year would be less than \$9 million.

19 SENATOR MELLO: And I think you have to really look at
20 the broad picture. There's a diminishing return for hunters and
21 fishermen. They're just dropping off because there's far less
22 people hunting now than before. There's just not too much to bag
23 out there, and the same thing with fishing.

24 So in time, when the take is going way down, it's going
25 to discourage people from buying licenses. But even right now,
26 the public has a great interest here, too. I mean, to see the
27 State of California be dry and shrink up the resources we have of
28

1 fish and game is of interest to the general public. A lot of
2 people go out and photograph species; others will enjoy seeing
3 part of wildlife and so forth.

4 Therefore, everyone talks about it, I've heard you talk
5 about it, Mr. Gordon Van Vleck has indicated the only way we're
6 going to survive, we're going to have to fund it through the
7 general fund more, but yet nobody's willing to put the money up
8 there. And a year like this is not the year to try to do it
9 because we're hardly funding programs that we have going.

10 But I think we just have to, in another budget year,
11 come up with some way of adequately funding the protection and
12 management of our fish and game resources.

13 MR. BONTADELLI: The Department shares your basic view
14 on that, Senator, and along those lines we're currently
15 sponsoring a bill by Assemblyman Jim Costa, which has been
16 coauthored by Senator Maddy. And in that bill, we are proposing
17 a series of new, basically fee-generated support for the
18 Department.

19 The Department is -- I know you are aware -- managing
20 approximately 400,000 acres of land, including many wildlife
21 areas which provide opportunities for bird watching, photographic
22 opportunities, and other basically nonconsumptive uses of
23 wildlife.

24 Along those lines, we are recommending that a day use
25 fee be able to be charged, that annual passes be able to be sold
26 at approximately \$10, and that a native species stamp at 7.50 be
27 sold for the general support of the overall wildlife of
28 California, particularly those that are not hunted or fished.

1 That bill, if it should pass, would authorize the center
2 to extend programs for the benefit of the public, which as you
3 note and survey data shows, is as large or larger in the
4 nonhunting and fishing community as it is in the hunting and
5 fishing community.

6 SENATOR MELLO: Thank you very much.

7 CHAIRMAN ROBERTI: Senator Craven.

8 SENATOR CRAVEN: Just one question, if I may.

9 It's my understanding that of all of the Western states
10 of the United States, and the Western provinces of Canada, we are
11 the only State that has the restriction which we have imposed
12 relative to the mountain lions.

13 Is that correct?

14 MR. BONTADELLI: That is correct, Senator.

15 SENATOR CRAVEN: Do the other States produce for us any
16 appreciable amount of experience that would show us whether we're
17 moving in the right or wrong direction, or anything that would
18 indicate ratio numbers in any great degree, to any great
19 exactness figure?

20 MR. BONTADELLI: Based on the information available from
21 our experts in the Department and literature search, they
22 indicate that up to 20 percent of the population of the lions
23 could be taken in a given year without adversely impacting the
24 population.

25 Our numbers were set significantly below that on either
26 our count or on the count that Senator Mello indicated is
27 correct.

1 SENATOR CRAVEN: I see. Thank you very much.

2 SENATOR PETRIS: I have to run to a committee to present
3 a bill. As usual the timing, I've been waiting. I have to
4 present a couple of bills, so I'll be much briefer than usual. I
5 know there'll be a lot of smiles on that.

6 A couple of questions on the mountain lion thing. I
7 know you're studying the decision, your lawyers are. I assume
8 there was conflicting testimony between the two sets of experts.
9 Is that true?

10 MR. BONTADELLI: It's my understanding, Senator, that
11 the --

12 SENATOR PETRIS: On the counting and so forth?

13 MR. BONTADELLI: -- that the actual point of contest,
14 the judge ruled that this was in fact not a new set of
15 regulations; that her order from dealing with last year's hunt
16 was still in effect. Therefore, under the continuing
17 jurisdiction that she exercised in this case, that we needed to
18 recirculate basically what we consider to be the final EIR for
19 this year's regulations. That's how we have dealt with it; that
20 was the position the Attorney General presented on our behalf
21 when we did the regulations setting process.

22 So that's why we're having a little question right now
23 as to precisely what it was.

24 I can't really tell you right now whether it was a
25 ruling on the merits of adequacy or inadequacy, or a procedural
26 question on circulation. Our attorney said one thing; the papers
27 are quoting another.
28

1 SENATOR PETRIS: I see when I had my bill that Senator
2 Mello mentioned, there was a very clear line of demarkation
3 between the two sets of experts.

4 MR. BONTADELLI: Yes.

5 SENATOR PETRIS: There had been an entire zone that
6 wasn't even considered, for example, that was just kept out of
7 the study. The methods used, although scientists did it, was
8 attacked as totally inaccurate in comparison to other methods
9 that would be more accurate, and so on and so forth.

10 I assume that's part of it as well.

11 MR. BONTADELLI: That is, Senator.

12 SENATOR PETRIS: Now, the treeing of the cat is standard
13 procedure; isn't it? That's just an occasional way to catch
14 them.

15 MR. BONTADELLI: That is the normal method of take used
16 for lions in all other States, Senator.

17 SENATOR PETRIS: The opposition to my bill on the Senate
18 Floor pointed that out. You see, my bill would have taken away
19 the hounds. They said if you take away the dogs, that's the end;
20 there's no way to hunt. So you tree them, and I cited the
21 example of a hunter who was called in from Alaska or someplace,
22 and they'd treed the animal for 28 hours, or 32, or whatever it
23 was, and then he came in and popped him out of the tree.

24 That does something to you when you read that that's
25 what these guys are fighting for. Even if we all agreed there
26 was a great big surplus, and that we have to thin the herd, so to
27 speak, that method doesn't appeal to me, you know.

28

1 MR. BONTADELLI: Senator, I appreciate that. I'll just
2 note that the regulations attempted to address that by requiring
3 the hunter actually be in the field with the dogs so that they
4 couldn't come in from somewhere else. I mean, we made an attempt
5 to clean it up.

6 SENATOR PETRIS: I know you're trying. You're doing a
7 good job, as a matter of fact.

8 Let me just get down to the real nitty-gritty question,
9 and then I'll run off. That is, looking over our list that we
10 have of supporters, you don't have to tell us the secret or the
11 formula, but I'd sure like to find out privately how in the world
12 do you get support from the National Rifle Association, the
13 Pistol people, and the Sierra Club?

14 CHAIRMAN ROBERTI: He's a good politician.

15 SENATOR CRAVEN: Just take the spelling of his last
16 name.

17 SENATOR PETRIS: I might point out that there's a very
18 good mixture, Mr. Chairman, of conservation groups in here, along
19 with others, who are strongly in support. And that impresses me,
20 as well as many things he's done as the Director.

21 So, I'd appreciate it if you'd keep the roll open. I
22 intend to vote in support when I get back.

23 CHAIRMAN ROBERTI: Thank you, Senator.

24 I have a couple of questions. As I understand it, the
25 Department is in charge of issuing permits for selling,
26 transporting and possessing exotic animals, as is the U.S.
27 Department of Agriculture.
28

1 I'm informed by people who are fairly knowledgeable in
2 this area that the U.S. Department of Agriculture's inspections
3 are rather spotty at best.

4 There's concern, however, that our Department, out of
5 593 inspectees, only 47 in 1987 were inspected. And of those,
6 none of the 30 large commercial facilities were inspected; they
7 were generally the smaller facilities. And I have one note that
8 one of the facilities inspected, not being a large commercial
9 one, was actually one owned by somebody who was a vocal opponent
10 of the Department.

11 So the basic concern is, why isn't the Department
12 inspecting more facilities? Why isn't it inspecting more of the
13 large commercial facilities? Is it budgetary, or do you have
14 plans to eventually encompass all permittees in this area?

15 MR. BONTADELLI: Thank you for the opportunity to
16 discuss that particular area, Senator.

17 You are correct on the number, 593 current permits to
18 maintain wild animals in California.

19 Under the current regulations in place, 159 of those
20 maintain cats -- lions, tigers, and so forth -- and have specific
21 caging requirements and a requirement of annual inspection.

22 The remainder of the facilities do not require an annual
23 inspection, but an initial inspection at the time of the
24 issuance.

25 Prior to this last couple of months, all of our material
26 and record keeping was done on a manual basis. And I will admit
27 freely that it was hit and miss, and not as complete as it needed
28

1 to be. In essence, those areas that were inspected, which were
2 those which either were new, or had moved, or something along
3 those lines.

4 The particular facility in Galt, which was a concern,
5 had moved and that triggered what was in fact a series of
6 inspections. It is my understanding that that facility has now
7 passed the inspection and will soon be receiving its complete
8 license.

9 Some of the larger facilities in California, such as the
10 Wildlife Way Station, which is probably the most notable in
11 Southern California, had been in fact operating under research
12 facility permits issued by the federal government. Those
13 institutions operating under a research permit were exempted from
14 our inspection requirements. That facility in this last year
15 lost its research status, and therefore is now subject to the
16 same terms and conditions of inspection as the other facilities
17 within California.

18 We have -- recognizing that this was a time-consumptive
19 area and one yet that required some significant activity, the
20 Department in 1985 sponsored a bill by Assemblyman Farr, 1620,
21 which would allow us to contract out this inspection opportunity
22 to responsible local entities.

23 At the current time, we have sent out over 500 requests
24 for bids to various humane societies, animal control groups, and
25 other interested individuals. The deadline for the return of
26 those bids is on June 26th. As of today, it's my understanding
27 that at least eight bids for statewide -- taking over that
28

1 program statewide have been submitted, as well as several for
2 specific areas of the State.

3 We are hopeful that once those bids come in, we will be
4 able to find an entity to do the inspections on a regular and
5 ongoing basis.

6 In addition, the computer program that we now have in
7 place with all of the facilities listed, in the interim until we
8 have someone in place, we are sending this out now to all of our
9 wardens and are starting the process of inspection. So far this
10 year, 43 facilities have been inspected, and if we maintain the
11 program until the end of the year, we will have covered all 159
12 that are required by annual inspection.

13 The General Services staffing audit of our particular
14 area of the Department indicated that we were understaffed in
15 this particular area for the workload; therefore, we have
16 increased money from the Seasonal Aid Pool and redirected
17 clerical support to try to address this particular question. And
18 the proposed budget for next year will shift the type of
19 personnel in that area to help us be more efficient and
20 accomplish our goals in that area.

21 We recognize there have been problems in the past. We
22 have an advisory committee to the Director, which is composed of
23 many individuals representing various points of view. That
24 particular group has made recommendations for significant changes
25 in our regulations. Those regulations will be mailed in the next
26 week, and lengthy hearings will be held in August on those, which
27 will help standardize the procedure, and out of which, hopefully,
28

1 we'll have a manual for what you must do to maintain, so that
2 whatever group -- us or another group under the bid process --
3 does future inspections, will do it in a uniform, consistent, and
4 hopefully, manner best for the animals.

5 CHAIRMAN ROBERTI: Thank you.

6 Of those permittees that aren't inspected on an annual
7 basis, what is the period of time, your lengthiest period of
8 time?

9 MR. BONTADELLI: There were some that, I believe, had
10 gone a number of years without inspection. We have now found
11 those were the targeted ones for the earliest inspections.

12 CHAIRMAN ROBERTI: Those are going to be targeted for
13 your earliest inspections?

14 MR. BONTADELLI: And all 159 that require inspections
15 will be done this year by us if we maintain the program.

16 CHAIRMAN ROBERTI: And you're in the process, therefore,
17 of setting up a system whereby every permittee is going to be --

18 MR. BONTADELLI: Some will be inspected annually
19 pursuant to the regulations; some will be inspected periodically.

20 CHAIRMAN ROBERTI: What's your longest length of
21 definition of periodically?

22 MR. BONTADELLI: I really can't answer that one for sure
23 without reviewing the regulations, Senator, and I haven't frankly
24 done that in as much detail as I need, but I believe it's two
25 years or three years.

26 CHAIRMAN ROBERTI: One other point was raised which I'm
27 not that familiar with, but it is a possible problem so I want to
28 raise it with you.

1 I'm told that the Warden Captain, Mr. James Zobel, in
2 charge of wildlife permits and related enforcement duties, has
3 indicated -- I don't have the method of indication so I'll just
4 state it -- that he has an interest in acting as a paid
5 consultant to exotic animal owners and dealers in matters
6 pertaining to permits or inspection regulations after he retires
7 from the Department.

8 If that's the case, and you know it to be the case, do
9 you feel that that's a cause of concern regarding his future
10 plans? Would you view that as a conflict of interest?

11 MR. BONTADELLI: Senator, that is an issue that was
12 raised in the press and which triggered an investigation on my
13 request. The Chief of Patrol and the Deputy to the Director of
14 the Department met with the individual involved and reviewed the
15 circumstances that led to the questions.

16 In fact, Mr. Zobel, or Captain Zobel, has been the head
17 of the Hunter Education Program in Region 2, and not assigned to
18 the animal area for approximately 20 months as of today. He
19 occasionally would come back on a rotation basis to fill in, as
20 do other captains when we have someone out in order to keep
21 trying to issue permits and maintain it. But other than that, he
22 has not been directly involved in an ongoing basis for 20 months.
23 His retirement is currently scheduled at the end of the year.

24 Based on the investigation of our personnel, the Chief
25 of Patrol and the Deputy Director, no conflict of interest have
26 been able to be established. If a conflict of interest as
27 alleged had been able to be established, then it might well have
28

1 been in conflict -- a violation of our conflict of interest code
2 that the Department does have in place. I believe it has a
3 timeframe during which you cannot come back and deal with the
4 same subject matter.

5 CHAIRMAN ROBERTI: Who made that investigation?

6 MR. BONTADELLI: The Chief of Patrol, who is head of all
7 of our law enforcement operations in California, and the Deputy
8 Director who oversees the law enforcement and the wildlife
9 management activities of the Department were the two that were
10 assigned, given the fact that this was a Captain, a relatively
11 high level person in the Department.

12 CHAIRMAN ROBERTI: Thank you, Mr. Bontadelli.

13 Are there any questions from Senator McCorquodale?

14 SENATOR MCCORQUODALE: Mr. President, I appreciate the
15 chance to join the Committee today on this confirmation hearing.

16 If it meets the approval, I would like to raise a series
17 of questions or issues with Mr. Bontadelli. I'm aware of
18 limitations on your time, so I'll try to move quickly.

19 I'm also aware that recently a wildlife writer
20 characterized Mr. Bontadelli that if you ask him the time of day,
21 he'll tell you how to build a clock. I might interrupt him from
22 time to time, but it's not to try to cut off any answer. If he
23 feels like he needs more time to answer a question that I might
24 have raised, I urge him to feel free to so indicate. But if I
25 think that he's answered it to my satisfaction, I might go on to
26 some other area.

27
28

1 One of the major concerns today among a lot of
2 Californians is the mountain lion hunting. That's been addressed
3 pretty well here, except that in one aspect, it seems that if
4 people really fell strongly opposed to the policy or the practice
5 that the State might carry out in any way, that they ought to
6 have a voice in expressing that. People have signed petitions;
7 they've appeared before the Fish and Game Commission; they've
8 written letters; they've gotten a bill through the Legislature,
9 which the Governor vetoed, that would have prevented.

10 Is there other ways, other than the courts, that the
11 citizens should be acting in your view, or is there no other
12 mechanism that citizens can have to influence the Department's
13 recommendation? Or should the Department respond to a
14 significant number of people in this case?

15 MR. BONTADELLI: The Department's role, as I understand
16 it and see it, is primarily to ensure that the resource is
17 protected. And once an animal goes into a classification as a
18 game mammal, which the mountain lion currently is, if in the best
19 judgment of the professional information that we have available
20 to us, a harvest is allowable, then the Department makes that
21 recommendation pursuant to Section 1800 of our Code, which
22 authorizes hunting as a legitimate opportunity on those animals
23 where a harvest surplus is present. That was the basis of our
24 recommendation.

25 At that point it goes to a minimum of three meeting
26 hearings in front of the Fish and Game Commission, who makes the
27 final determination on the regulations and so forth.
28

1 I know that those hearings were, in fact, held. They
2 were rather lengthy. And I believe that the administrative file
3 filed with OAL contained over 12 boxes of material, both pro and
4 con, people supporting and opposing the hunt. To the best of my
5 knowledge, that's the largest regulatory file ever created in
6 California on a single subset of a regulation.

7 The Commission itself, I believe, heard the issue, and
8 at least one member of that Commission chose to vote in
9 opposition to the hunt. So that there was, I believe, an
10 opportunity to be heard on the issue.

11 SENATOR MCCORQUODALE: It's been pointed out by a lot of
12 people, which I don't necessarily agree, that there is a weakness
13 in your appointment because of not being a biologist, or some
14 person trained and skilled in this area.

15 If you don't have that background, then you have to rely
16 on something else. Senator Mello raised the issue of the correct
17 count.

18 How do you feel really comfortable that that count is
19 there that would justify a hunt, and that 191 tags were
20 appropriate?

21 MR. BONTADELLI: Senator, I verified that information
22 with not one but several people within the Department who I've
23 come to feel relatively comfortable with, the same people who do
24 our deer count and several of the other activities, and reviewed
25 the methodology.

26 Dr. Hornocker, who's the nation's leading expert, when
27 he was here last year, at the request of the Mountain Lion
28

1 Foundation, indicated that if he came to California, he would
2 establish some sample areas and do intensive collaring and study
3 in those areas, and then project out the figure to similar
4 habitats.

5 So, effectively, the method that he has recommended be
6 used is the same basic one we used. The question is whether our
7 tagging was as sufficient and as complete as would be the program
8 that Dr. Hornocker would recommend. And I recognize that that is
9 a major point of controversy.

10 So, from methodology currently used, not only for the
11 mountain lion but most of the other animals that are in the
12 State, it appears to be a reliable method. I was convinced that,
13 even if given the range that we had, since all the literature
14 indicated approximately a 20 percent harvest rate was allowable,
15 and we were talking 4 percent of our number, or 8 percent of the
16 number used by the Mountain Lion Foundation, that we were well
17 under the total number that would create a potential adverse
18 impact. Hence, we felt comfortable going forward with it.

19 SENATOR MCCORQUODALE: Going from fir to fins, another
20 area in which there's been tremendous disagreement with the
21 Department was in the count on salmon for the 1988 season. And
22 based on that disagreement and projections of the Department, the
23 season was obviously going to be very short, and at that time,
24 salmon prices were extremely high. And I think reported on
25 opening day, some 400 boats were out fishing, and in three days
26 they'd used up the quota.

27
28

1 At the same time, the sports fishing allowance had been
2 increased. And now we've readjusted that, and I assume the
3 Department decided that its initial figures were not right and so
4 they've extended it.

5 Could you tell us a little bit about the problem there,
6 and what the Department might be doing to keep that from
7 happening again?

8 MR. BONTADELLI: The main question is in the Klamath
9 Management Zone, Senator, which is basically in the area from the
10 Humbolt-Mendocino County line up into southern Oregon, in the
11 Brookings area.

12 The information available was based on some formulas
13 that had been agreed to by a series of technical teams, and the
14 sharing or split was based pursuant to the Klamath River
15 Agreement which had been signed by a variety of parties,
16 including all of the users, both in river and ocean.

17 The abundance of the stock and the questions on it came
18 in because of different data that had become available between
19 the varying years.

20 I will note that based on the Klamath Sharing Agreement,
21 if you look at the actual take in 1986, we hit 165 percent of
22 that which the numbers technically would have allowed. In 1987,
23 the actual take was 169 percent. And the regulations adopted by
24 the Pacific Management Council would have authorized 122 percent
25 of what the numbers technically allowed.

26 So it's our belief that they had actually allowed a
27 number higher than was technically justified by the numbers to
28 try to keep an economic benefit.

1 The actual sport quota in 1987 was 70,000 fish within
2 the Zone, and that adopted in 1988 to 55,000 fish. The take
3 number for sport was in fact approximately 40,000, even though
4 the quota had been 70. So that was the difference, the numbers
5 on comparison, where one was actual take as opposed to quota. So
6 the number allowable this year was 55,000.

7 In fact, looking at the economics of the North Coast,
8 and realizing that the commercial season would, in fact, be
9 short, ensuring that the economy of the area would not be
10 adversely impacted still within the total numbers allowable for
11 harvest, a decision was made to try to allow the sport to run the
12 entire summer, and hence, keep the economy with some degree of
13 stability over that entire period since the commercial would have
14 to be a very short one this year.

15 SENATOR MCCORQUODALE: Do you feel confident that your
16 data will be better as time goes along? Or do you think that
17 same problem is going to keep occurring?

18 As you say, '86-87 was not a very good prediction years
19 either, and now '88. Is the Department doing anything to deal
20 with this disparity? There were 40,000 King salmon caught in
21 three days, which doesn't do the market any good; it doesn't do
22 the economy any good to create a force that gets out that many
23 people.

24 MR. BONTADELLI: Senator, we are totally aware that we
25 need to relook at our data. And that is in the process of being
26 done.

1 The Klamath Fisheries Management Council met in June 2nd
2 and 3rd, and created a subcommittee of users, which will be
3 meeting through the summer in an attempt to amend the Klamath
4 agreement to provide for more equitable sharing between the
5 various users.

6 In addition, we have experts coming in from Oregon and
7 Washington and other states to review our actual formulary that
8 is being used, to see if we can refine it.

9 It is very clear, however, that the entire projection
10 process errs on the side of protection of the resource, and in
11 fact allowing a higher number of fish to return to the river.

12 I will not state for certain, since we don't know
13 whether it was distribution of the fish, increased efficiency of
14 the fleet, or precisely what it was that allowed that massive
15 take in so short a time this year. At the end of the season
16 we'll know for sure, and I suspect, Senator, we will again have
17 erred significantly on the side of protecting the resource and
18 allowing less harvest than may otherwise have been acceptable.

19 SENATOR MCCORQUODALE: Looking at the oil spill issue, I
20 had planned on attending that Regional Water Quality Control
21 Board, and I wasn't able to go. Afterwards, I heard that the
22 Department had taken a very low key position on its concern about
23 the impact of that oil spill on fish and wildlife.

24 I later heard that the Department had told the Fish and
25 Game representative there not to speak on that issue and not to
26 raise the issue.

27 Is there any validity in that?
28

1 MR. BONTADELLI: This was the Shell?

2 SENATOR McCORQUODALE: Yes.

3 MR. BONTADELLI: It's my understanding that Brian Hunter
4 of our Region 3, Regional Manager, did in fact testify late in
5 the day at that particular hearing, so that we did have some --
6 this is the hearing --

7 SENATOR McCORQUODALE: On the 16th --

8 MR. BONTADELLI: -- that Senator Torres held?

9 SENATOR McCORQUODALE: This was the Regional Water
10 Quality Control Board.

11 MR. BONTADELLI: I'm not aware of the specifics on that,
12 Senator.

13 I do know that at the current time we are working
14 cooperatively with the Attorney General's Office and doing a full
15 assessment of the impact of the Shell oil spill. And in
16 preliminary information that we have send forward, we have noted
17 that the habitat must be restored to the condition it was prior
18 to the spill, and if it cannot be restored on site, additional
19 offsite mitigation may be required.

20 In addition, since we are unsure of long-term impacts
21 and potential adverse impacts on things such as the Striper
22 Fishery, which will take several years to fully evaluate, since
23 the most adverse impact would probably be on the eggs and larval
24 stage, which would not be seen for another three to four years in
25 the catch, we are recommending that a fairly large pool be set up
26 to handle any future loss obligations.

27
28

1 But we are working cooperatively with both the Board and
2 the Attorney General's Office. One AG has been assigned to
3 represent all of the departments to come up with a unified State
4 position on collection, recovery and mitigation.

5 SENATOR McCORQUODALE: One of the things that you've
6 indicated to me in our discussion in the past about the
7 Department of Fish and Game, and which I think others view as
8 being a weakness on behalf of Fish and Game, is you only have an
9 advisory position.

10 MR. BONTADELLI: Yes.

11 SENATOR McCORQUODALE: But it would seem like if you
12 have an advisory position, that any time you can have someone
13 appear before an enforcement group, that you need to be more
14 aggressive then than you would be if you had independent power.
15 Now Mr. Rutsch from your Department was there, but he did not get
16 up and make, I'm told, did not make a very strong -- didn't make
17 a pitch, did not make a strong, aggressive statement that the
18 Regional Water Quality Control Board had to deal with the
19 problems and the loss of fishing, and fish habitat, and wildlife,
20 bird, problems.

21 MR. BONTADELLI: I appreciate your statement, Senator.
22 I do not know the precise circumstances of that particular
23 hearing, but I will note that in the area of oil spills, unlike
24 most other areas, the Department has some specific authorization
25 that Senator Marks provided to us following the Puerto Rican.
26 That allows us to independently pursue any losses for fish and
27 wildlife, even should the Water Board choose to go forward with
28

1 their independent powers. That's one of the few areas we do have
2 that power.

3 And it was my understanding that the Attorney General is
4 therefore trying to coordinate the activities of the agencies so
5 that a single figure could be arrived at for the State.

6 SENATOR MCCORQUODALE: Speaking of the Puerto Rican, it
7 was before your time, but I'm sure you've probably had a chance
8 to review the records going back. The Attorney General's Office
9 was very critical of Fish and Game at that time.

10 MR. BONTADELLI: Correct.

11 SENATOR MCCORQUODALE: And they, in fact probably one of
12 the reasons they had abandoned part of their pursuit of
13 reimbursement was that the records and the work that had been
14 wasn't organized well, a real problem. And so Senator Marks'
15 bill did give you additional authority.

16 MR. BONTADELLI: That is correct.

17 SENATOR MCCORQUODALE: Tell us today a little bit of
18 overview of who's in charge? Is there one person in charge of
19 oil spills, or is this still dispersed between several people, or
20 how do you deal with it?

21 MR. BONTADELLI: We now have a centralized oil spill
22 coordinator for the Department. It's more than just -- well,
23 it's hazardous materials coordinator for the Department, who is
24 here in Sacramento.

25 In addition, there is a specific lead warden in both
26 Northern California and Southern California to handle the actual
27 on the scene coordination and involvement.
28

1 Beyond that, the Department is in the process, following
2 the criticism we got from the Attorney General's Office, of
3 bringing in a series of key economic experts on helping us set a
4 method for evaluating losses and setting a dollar figure in
5 converting losses of fish or habitat to dollars, which is the
6 hard part as you get into settling on mitigation questions
7 following a loss on the spill. That is -- a series of hearings
8 on that is currently under way internally in the Department, and
9 we have invited, I believe, our first public hearing will be
10 prior to July 1st of this year, followed by another one next
11 year, so that, hopefully, a single method will be used by the
12 Department and be consistent throughout.

13 But at the current time, a lead individual is assigned
14 to each spill who does the evaluation and brings that information
15 in to us, following each spill. I'm not sure who was assigned on
16 this one. Perhaps if you would like that answer, Mr. Jenson, who
17 is our Deputy in charge, could get that for you. He's here in
18 the audience, I believe.

19 SENATOR MCCORQUODALE: The important thing, I think, is
20 that there be somebody, a person in charge.

21 MR. BONTADELLI: That is now happening, Senator.

22 SENATOR MCCORQUODALE: You talked about the hearing.
23 Were you talking bout that conference that's being held on the
24 29th and 30th?

25 MR. BONTADELLI: I believe that's the one, Senator, yes.

26 SENATOR MCCORQUODALE: That leads, then, to the next
27 issue that I wanted to raise, because I wanted to ask you if you
28

1 knew either Michael Hanemann or Richard Carson. Do those names
2 ring a bell?

3 MR. BONTADELLI: I do not personally know either of the
4 gentlemen involved. It is my understanding that there is a
5 degree of controversy since they were both involved representing
6 people other than fish and wildlife interests in past appearances
7 in front of the Water Board or other places.

8 It's my understanding that the conference has been
9 expanded to include an additional individual, Dr. John Loomis,
10 who has a relatively clean record in that type of background, and
11 that this is the first of two conferences to get input so that we
12 are ensuring that all points of view, from an economic
13 standpoint, are available prior to any decisions being made.

14 SENATOR MCCORQUODALE: You've opposed or raised
15 questions about the hydroelectric plant at Redding?

16 MR. BONTADELLI: Yes, we have, Senator. I think the
17 Mayor quoted us as having been in continual opposition since
18 1982, and that our recent statement of reopposition to the most
19 recent action was therefore nothing new, was her phrase.

20 SENATOR MCCORQUODALE: Going back to Professor Hanemann,
21 I have some concern about the broad reach that he has on a number
22 of issues and his philosophy related to low value of fish and
23 game. I don't know about game, I don't follow that, but in fish.

24 Does it bother you some that a person that's so integral
25 on the part of advising and dealing with fish and game issues
26 might also appear as a consultant for a large project like that?
27 All indications are it's going to have a devastating effect on
28 the fisheries.

1 MR. BONTADELLI: That, Senator, was one of the reasons
2 that it's my understanding we now expanded the scope of the
3 people providing input at that hearing on the -- at the end of
4 the month, or the conference at the end of the month, to include
5 additional personnel. And that no final decisions will be made.

6 Several people, both within our Department and outside,
7 have raised similar questions and asked to ensure that we have,
8 for example, Dr. Meyer from Davis, who had significantly
9 different and higher value of fisheries, also have the
10 opportunity to have input prior to any decisions or final
11 recommendations being determined. Therefore, a second conference
12 is now also being scheduled.

13 SENATOR McCORQUODALE: Does it seem reasonable that the
14 Department might look at its method of contracting for economists
15 in this area, and while I'm not arguing that it shift over, use
16 only those that say a fish is worth a million dollars, it seems
17 like there ought to be some mix. Because what comes to you and
18 the decision you make seems like it should come from different
19 sources, and you weigh that from a practical standpoint.

20 MR. BONTADELLI: I appreciate that totally, Senator, and
21 that's why we now have a committee representing varying units
22 within the Department that'll be providing input on future
23 conferences.

24 SENATOR McCORQUODALE: At one time in the past I had
25 complained because you didn't come to the hearings. We had had a
26 meeting and we discussed that. I was relatively satisfied with
27 your response and your position on that.
28

1 However, I wrote you a letter on the 25th of May and
2 haven't gotten a response yet. Is that a normal length of time
3 it would take to respond to the Chair of a policy committee?

4 MR. BONTADELLI: I hope it is not normal, Senator, and I
5 will do my best to track that down when I get back. We try to
6 have them within a two-week turnaround time.

7 SENATOR McCORQUODALE: I'm getting reasonably close, for
8 the information of the other Members, to the end.

9 I just wanted to touch base on an area that we've had
10 some high level of concern over the years in California related
11 to the hatchery operation.

12 I understand that there is a report out, so I won't ask
13 any questions about the report coming; I won't ask questions
14 about that. But let me go to a specific case which I think we've
15 communicated to you in the past, the issue of the Department
16 purchased some, at that time, known to them, diseased stock, took
17 them to some lakes in which the Whirling disease occurred
18 naturally, and they thought that was all right. What came out of
19 that was a problem related to another disease, Rickettsia, which
20 has a devastating effect on dogs if the fish are not treated.

21 Are you in the process of reviewing that whole hatchery
22 operation with some means of resolving some of the problems? It
23 seemed to me that if you purchased fish and they're diseased in
24 some way, you probably shouldn't have paid for them. I don't
25 know all the circumstances, but it would seem like to me that
26 there should be a clearer policy for the Department.

27
28

1 MR. BONTADELLI: The particular fish involved in this
2 case, Senator, were from a private aquaculturist who had been
3 declared to have Whirling disease by Department pathologists.

4 Under the current State law, we are obligated to buy
5 those fish from them and either destroy them, or if possible,
6 plant them out into an area where the disease with which they are
7 infected is known to exist to try to increase, say, an
8 opportunity for fishing. In this case the disease was Whirling
9 disease.

10 They were in fact -- the first three to four loads were
11 planted out very successfully and increased significantly the
12 opportunity for people to harvest some rather large fish in the
13 Boca and Stampede Reservoir area of the -- near Tahoe, on the
14 Truckee system. The reason that particular river was chosen is
15 that Whirling disease is endemic to that particular river system,
16 and therefore reintroduction was not a problem.

17 What we were unaware of at the time was that Rickettsia,
18 or salmon disease, was present in those fish.

19 We now have a review committee of our pathologists and
20 others who review all fish prior to the time they move. And any
21 fish that appear to be in question are ordered not to be moved
22 until a pathology clearance has been made on them. That is now a
23 standing order, and we have a committee that has recommended that
24 we go to ultraviolet light hookups at our hatcheries and others
25 for -- which would, in fact, take care of the Rickettsia.

26 The first phase of that is contained in the current
27 year's budget, and the balances, hopefully, will be contained in
28 the next year's budget, to have that for all of our hatcheries.

1 SENATOR MCCORQUODALE: Senator Roberti had asked
2 questions about the exotic animal refuge, and you'll probably
3 hear about them later today still, so I'm not going to ask a
4 series of questions I had there.

5 I think you've got about 20-30 vacancies in the
6 Department now in wardens.

7 MR. BONTADELLI: Twenty-six at the current time,
8 Senator.

9 SENATOR MCCORQUODALE: Is there a reason not to fill
10 those, or are you moving to do that?

11 MR. BONTADELLI: We are at the current time working, I
12 think, fairly well in attempting to fill those vacancy rates.

13 The total number vacancy rate is 7 percent
14 departmentally; however, what creates a problem for us is that
15 approximately 50 percent of those vacancies occur in Southern
16 California.

17 Just as a point of comparison, the Highway Patrol has
18 roughly a 4 percent vacancy rate, and 25 percent of those occur
19 in the Southern California area. I will note, however, that the
20 Highway Patrol, which has the same basic post requirements as we
21 have in terms of once you make a hire, someone has to go through
22 the post academy process, and they start at approximately 34
23 percent greater starting salary in the same areas that we try to
24 hire wardens with the same basic background requirements.

25 It's also a statement of, I guess, close to truism that
26 most people who go to work for the Department of Fish and Game
27 have a tendency to prefer to be in areas other than some of our
28

1 urban centers, which have not only high cost of living, but not
2 necessarily the greatest wildlife values. Therefore, we have a
3 real problem maintaining personnel in those urban core areas.
4 The highest area is in the Los Angeles area, followed by San
5 Diego and certain parts of the Bay area.

6 In order to try to avoid -- get around that problem, we
7 have started individual test giving in the L.A. area and in the
8 Bay area in an attempt to get people who are from that area.

9 SENATOR MCCORQUODALE: There's no concerted action of
10 not filling those vacancies?

11 MR. BONTADELLI: There is no concerted action at it,
12 Senator. We're just working through a slow, tedious process on
13 it.

14 SENATOR MCCORQUODALE: Are you familiar with the spill
15 that took place from a mine up by Redding?

16 MR. BONTADELLI: The most recent slug of water that came
17 through, yes, Senator.

18 SENATOR MCCORQUODALE: The Department of Reclamation was
19 responsible for the toxic spill.

20 MR. BONTADELLI: The sledge at the bottom of one of
21 their dams was sluiced into the Sacramento River, yes, sir.

22 SENATOR MCCORQUODALE: The State has been pretty
23 aggressive in suing the federal government if they don't provide
24 money for the developmentally disabled area and Medi-Cal area.
25 There's been a lot of law suits against the federal government,
26 many of which the State has won.

27
28

1 Fish and Game seems reluctant to take on federal
2 agencies. This is one example. Do you think you'll pursue that
3 aggressively with perhaps a lawsuit against the Department of
4 Reclamation, or is this not an area that --

5 MR. BONTADELLI: I will give you the information I have
6 on that particular one.

7 The Section of our Code that would be open for use here
8 was 5650. It is a misdemeanor violation resulting in a \$500 fine
9 unless we could document fish losses. Based on the best
10 information I have from our personnel in the field, no precise
11 fish losses were able to be documented. We've had some lengthy
12 discussions with the Bureau about the problems at Iron Mountain
13 Mine, which is actually an EPA cleanup site on the Superfund list
14 and is currently under an order for clean up.

15 In addition, we and the Bureau are working, along with
16 EPA and the Regional Water Quality Control Board, to head off
17 what we expect to be potentially far more significant problems
18 this fall from that particular mine. I'm not aware of anything
19 that is currently pending on that particular incident because no
20 fish losses were specifically documented on it.

21 SENATOR McCORQUODALE: I may have the wrong Assemblyman,
22 but I understand some Assemblyman has asked the Little Hoover
23 Commission to take a top to bottom investigation of your
24 Department.

25 Will you welcome that, or will you resist that effort?

26 MR. BONTADELLI: To date we have had a multitude of
27 audits and so forth in the last few years. I think we've
28 probably had 12-14 varying audits.

1 I frankly look forward to each of them, because each of
2 them has provided us with specific points that we're able to
3 attempt to address and clarify.

4 Assemblyman Statham is the one who request that
5 particular review, and it was over the scope and authority of the
6 Department, whether we are too intrusive into persons' lives and
7 too all extensive in our recommendations on behalf of local
8 government and interfering with development, as I understand the
9 press releases. They indicated that it was, hopefully, a review
10 of our authorities under the Code, and whether or not we had the
11 correct role, which would be policy level recommendations, and
12 coming back to the Legislature for decision.

13 I always welcome that ability to have that type of
14 review.

15 SENATOR MCCORQUODALE: Very good. Thank you.

16 CHAIRMAN ROBERTI: Thank you, Senator McCorquodale.

17 We'll now take support in the audience. If you are
18 adding something new, please do so. If you are going to repeat
19 policy positions Mr. Bontadelli has already referred to, please
20 indicate your organization and your support.

21 Before we do that, the Committee Reporter needs a break,
22 so we'll break for ten minutes.

23 Thereupon a brief recess was taken.)

24 CHAIRMAN ROBERTI: The Committee will come to order.

25 The Senate has a coat and tie rule which we are
26 relaxing, for those who want to be relaxed.

1 Please come forward, and please indicate who you are and
2 what organization you represent.

3 MR. PALMER: Thank you, Mr. Chairman, Members.

4 My name is Mark J. Palmer. I am Chairman of the Sierra
5 Club National Wildlife Committee, representing the Sierra Club in
6 support of Pete Bontadelli as Director of the California
7 Department of Fish and Game.

8 We have a number of specific reasons why we're endorsing
9 Mr. Bontadelli. Some have claimed that Mr. Bontadelli is not a
10 professional biologist, and they would be right.

11 We feel, however, it is more important that
12 Mr. Bontadelli listen to and act on the advice of his staff
13 biologists in his decision making role, using his political and
14 managerial skills to guide the policies of the Department to be
15 effect. We feel he has shown on a number of occasions the
16 willingness to support his professional staff on hard choices in
17 fish and wildlife matters.

18 Pete Bontadelli's record on issues of importance to the
19 Sierra Club is quite good. It is important that the Senate
20 encourage and promote Pete's positive record for protection for
21 fish and wildlife resources.

22 There's details in my letter of endorsement on some of
23 these issues. I'll just briefly mention a couple of them:
24 habitat protection, and the protection of endangered species
25 habitat in particular. Two million dollars in the current budget
26 for purchase of habitat for rare and endangered species.
27 Mr. Bontadelli has an innovative program to protect prime deer
28

1 habitat in cooperation with county planning departments. The
2 Environmental Services branch, Pete Bontadelli has been very
3 active in supporting his staff biologists. We feel that is very,
4 very important.

5 We feel the policy decisions of this administration
6 should not stifle the biological opinions that come out of the
7 experts in the Department of Fish and Game, and we feel
8 Mr. Bontadelli's been very helpful in helping us ensure that.

9 The natural history program, we've mentioned Jim Costa's
10 bill, to provide a place for the public to enjoy wildlife on
11 State lands, wildlife that isn't hunted or fished, and provide
12 for alternative types of recreation besides hunting and fishing.
13 The Department's financial problems seem to be improving
14 substantially.

15 Access to Mr. Bontadelli is quite good. There are
16 particularly innovative constituent meetings between sportsmen's
17 groups, for example, and sport fishing groups, commercial fishing
18 groups, environmentalists. There is common ground amongst these
19 groups that can work on fish and wildlife issues. We think it
20 has been very helpful to work with Mr. Bontadelli in these areas
21 and to seek that common ground.

22 One of the more controversial issues which we have seen,
23 particularly in the press since our support's come out, is the
24 question of sport hunting. First off, the Sierra Club is not an
25 anti-hunting organization. We really don't oppose sport hunting
26 per se. For many years we opposed the hunting of tule elk and
27 Nelson big horn sheep.

28

1 We dropped our opposition for three basic reasons. The
2 increase in population, these animals have increased over the
3 last ten years to a substantial, healthy populations in the State
4 of California. Secondly, the State Legislature has protective
5 legislation in process right now which protects these species
6 from being over-hunted, if you will: Senator Presley's
7 legislation of a couple years ago on Nelson big horn sheep;
8 Senator Behr's legislation which protects tule elk so they cannot
9 be hunted under the level of 2,000 throughout the State. Perhaps
10 third and most importantly, the Department of Fish and Game has
11 agreed with us to continue their efforts to improve these herds,
12 to increase the number of animals, and to increase their
13 geographic spread through transplants and whatnot.

14 Under those circumstances, we feel the species are
15 safeguarded by the Department of Fish and Game, and we're willing
16 to work with the Department of Fish and Game, and a limited sport
17 hunt on those species, we don't think, is going to be harmful.
18 That is why we dropped our opposition to those hunts.

19 In the case of the California mountain lion, we continue
20 to oppose mountain lion hunting. We have told Mr. Bontadelli
21 that we oppose mountain lion hunting. I can tell him again if
22 you like, that we oppose mountain lion hunting. It is a major
23 area of disagreement for us. I just point out that there are
24 other players in that issue. We did win a court case on Monday,
25 the Sierra Club and the Mountain Lion Preservation Fund, which we
26 hope will do in the season this year. Certainly we will be
27 coming back to Mr. Bontadelli if the Department continues to
28 persist in a hunt that we oppose.

1 But the Sierra Club supports Mr. Bontadelli as Director
2 for the other reasons that I indicated. We think, by and large,
3 on most of the issues we can work with him, we can work with him
4 well for the protection of our wildlife resources. We will try
5 to argue with him on those areas where we disagree with him and
6 help him to see the light. On those occasions where we don't
7 manage to make him see the light, I hope the State Senate will
8 join us in our attempts to bring him -- show him the error of his
9 ways, if you will. And might I suggest we start with State
10 legislation to give full protection to the California mountain
11 lion.

12 Thanks very much for your consideration. I'd be happy
13 to answer any questions Members of the Committee might have.

14 CHAIRMAN ROBERTI: Thank you very much. No questions.

15 MR. WILSON: Mr. President and Members, my name is Bob
16 Wilson. I represent Trout Unlimited. We're an organization that
17 represents approximately 3,000 anglers in California.

18 We are in very strong support of Mr. Bontadelli.

19 When I was in the Legislature, I was the Chairman of the
20 Select Committee on Fish and Game. And at that time, the
21 Committee passed legislation which requires that 25 miles each
22 year of stream be set aside for a reduced limit. Legislation was
23 introduced which would curtail that program. We had numerous
24 discussion with Mr. Bontadelli. That legislation was withdrawn.

25 We find Mr. Bontadelli extremely accessible. In fact, I
26 have dealt with most of the previous Directors of the Department,
27 and without a doubt, Pete is the most accessible Director with
28 whom I have ever worked.

1 He is very concerned about the environment, which is a
2 chief concern of my client, Trout Unlimited; is very concerned
3 about the California wild trout program. He's very sensitive to
4 the issues to which my clients have a great interest.

5 We believe that Mr. Bontadelli would make a great
6 Director of the Department, and we've had a lot of experience on
7 these issues, and we are here today in very strong support of his
8 confirmation.

9 Thank you very much.

10 CHAIRMAN ROBERTI: Thank you very much.

11 SENATOR CRAVEN: Are you any relation to the Bob Wilson
12 who authored a rather voluminous treatise on fishing of the type
13 you have described?

14 MR. WILSON: In fact, he's one of my best friends.

15 SENATOR CRAVEN: I see. I've read that with a great
16 deal of interest.

17 MR. SPOTTS: Mr. Chairman and Members, I am Richard
18 Spotts, the California representative for Defenders of Wildlife,
19 and I'm speaking on behalf of our 14,000 California members.

20 We support Mr. Bontadelli's confirmation because we have
21 found him over the years to be very fair, effective, objective,
22 professional, and conscientious in his work. Indeed, he has
23 played a pivotal role in supporting many positive wildlife
24 accomplishments. He has supported meaningful protection for
25 Cordell Bank, a proposed national marine sanctuary off of Bodega
26 Bay in the ocean. He has allowed his experts to criticize Lease
27 Sale 91, the Interior Department's very controversial offshore
28

1 drilling proposal for Northern California. He has raised
2 concerns about the Bureau of Reclamation's proposed water
3 marketing in the Central Valley, which may have serious adverse
4 impacts on migratory waterfowl, endangered species, and
5 fisheries. And he has raised concerns about Delta water quality
6 vis-a-vis the State Water Resources Control Board's hearing
7 process.

8 He's also been a consistent supporter of the Wildlife
9 Conservation Board's very impressive record in acquiring critical
10 habitats to protect California's 254 endangered, threatened and
11 rare species.

12 Most recently, we've been excited to work with Director
13 Bontadelli on what we believe is his visionary legislation,
14 authored by Assemblyman Costa, to initiate a new natural history
15 program to encourage more public understanding and appreciation
16 of wildlife values, and also to provide for compatible public
17 recreation of the State's wildlife lands.

18 Of course, the media tends to focus on the areas of
19 greatest controversy, but we think it's important to note that on
20 most wildlife issues, we agree with Director Bontadelli. So we
21 urge your support and confirmation.

22 Thank you.

23 CHAIRMAN ROBERTI: Thank you very much.

24 Next witness.

25 MR. McNAIR: Gentlemen, I don't belong to any
26 organization. I'm just a citizen of the State of California, and
27 I have a very short statement.
28

1 Gordon McNair is my name.

2 Senators, since 1982, the Department of Fish and Game
3 have told the general public that gill netters fishing off the
4 California coast were legal. DFG also stated publicly that the
5 kills of the Muir population, harbor seal, porpoises, and any
6 other species of bird, animals or mammal that was caught in this
7 indiscriminate killer was incidental and would not impact the
8 species. That was a lie.

9 Over 100,000 federal felonies have been committed by
10 gill netters and their activities, all under the auspices of the
11 California Fish and Game and have been documented. These
12 felonies have been recognized but have been put aside. Why?

13 What about all the boats that have been netting
14 illegally under CDC numbers instead of being documented by the
15 Coast Guard, all under the eyes of Fish and Game? This is also
16 documented.

17 All the time Pete Bontadelli has been Assistant Director
18 of Fish and Game, why has he not done anything to stop it?

19 Now he wants to be Director of Fish and Game. Who in
20 their right mind can count on this man? The special interest
21 groups who make deals with this man are the only ones.

22 Thank you very much.

23 CHAIRMAN ROBERTI: Thank you.

24 We're going to try to confine it to proponents right
25 now. We'll take opponents afterwards.

26 MR. MCNAIR: Do you want me to stay?

27 CHAIRMAN ROBERTI: No, you don't have to.
28

1 Next witness.

2 MS. FULTON: My name's Carol Fulton, and I'm the
3 Executive Director of Friends of the Sea Otter, a nonprofit
4 conservation organization of more than 2700 members that's worked
5 since 1968 to protect the sea otter and its nearshore marine
6 habitat.

7 We're here in strong support of the appointment of Pete
8 Bontadelli as Director of the Department of Fish and Game.

9 With Mr. Bontadelli's help during his tenure as the
10 Department's Acting Director, Special Assistant to the Director,
11 and Chief Deputy Director, we have seen simply the greatest
12 strides taken toward the recovery of the California sea otter
13 since its rediscovery 50 years ago.

14 Working with concerned Members of the State Legislature
15 -- primarily Senators Mello, Marks and Maddy, and Assemblymembers
16 Farr and Seastrand -- prohibitions have been enacted on the use
17 of gill and trammel nets throughout most of the shall nearshore
18 waters of the sea otter range; prohibitions which are estimated
19 to have saved the lives of an average of 100 otters per year.
20 Since those bans were put into place, we have seen the first
21 small but they're encouraging signs of population growth in well
22 over a decade. Mr. Bontadelli and his Marine Resources staff
23 deserve a great deal of the credit for that accomplishment.

24 More recently, working in close cooperation with the
25 U.S. Fish and Wildlife Service, the Department participated in
26 the remarkable achievement of safely moving more than 60 sea
27 otters to San Nicolas Island, a recovery effort admittedly still
28

1 very much in its infancy, but one holding great promise for
2 securing a reserve breeding colony of sea otters in their
3 ancestral home. Mr. Bontadelli played a key role in arriving at
4 a translocation plan that would enhance the sea otter's chances
5 for recovery, while protecting Southern California's most
6 important shellfishing areas from future competition with the sea
7 otter.

8 We're also very grateful for two recent convictions for
9 killing sea otters. These are the first convictions we've
10 obtained in 18, eighteen, 18 years it's been since we've had
11 convictions. That was due to the high priority placed on those
12 cases by the California Department of Fish and Game wardens and
13 the wildlife protection officials in the Department.

14 The Department's also now working on a long overdue oil
15 spill contingency plan for sea otters. We hope it is soon to
16 become a reality, and that facilities for cleaning and
17 rehabilitating oiled otters will be fully stocked with trained
18 personnel on ready standby for any oil spill entering the otter
19 range.

20 To sum up, while we have not always been in agreement
21 with Mr. Bontadelli, we have found him to be honest, accessible
22 and fair. We've found him to be one of the Department's most
23 effective advocates, and we think that's largely because of the
24 fact that he has experience with the Legislature, his ability to
25 quickly understand issues and persuasively state his arguments.

26 We encourage you to confirm him, and we look forward to
27 working with him in the future.
28

1 Thank you for considering our views.

2 CHAIRMAN ROBERTI: Thank you very much.

3 Next.

4 MR. OLSON: I'm Glenn Olson, Western Regional Vice
5 President for the National Audubon Society.

6 Audubon is a wildlife conservation organization, a
7 private organization, with 65,000 members in California,
8 organized into about 54 local chapters. Our primary mission
9 since 1905 has been wildlife conservation.

10 I'm speaking today also on behalf of Jerry Meral, the
11 Executive Director of the Planning and Conservation League, who
12 was unable to stay for the duration of the hearing.

13 We're both here to endorse the confirmation of Pete
14 Bontadelli as Director of the Department of Fish and Game.

15 I'm going to leave my written statement. It echoes much
16 of what has been said by the Sierra Club representative and
17 Richard Spotts from Defenders of Wildlife. I won't go into that.

18 But let me just add a point that hasn't been raised. We
19 work closely with the Department. We've worked closely since
20 1940 on the California condor recovery. We have professional
21 biologists working in the condor recovery program in Ventura
22 alongside of the Department. We work alongside of the Department
23 in wetlands conservation, the highest priority issue for the
24 National Audubon Society in California, as well as in the
25 protection of old growth forests in the northwest part of the
26 State. And we work alongside of Mr. Bontadelli and his staff in
27 those areas, and we've found him to be a very professional
28 person.

1 But the issue that I want to raise is the rebuilding of
2 the esprit de corps in the Department. I was able to participate
3 earlier this spring in a wildlife management branch meeting --
4 the first meeting of all the wildlife management branch since
5 1973, together as a unit, to talk about what the Department ought
6 to be doing.

7 The Department of Fish and Game, as many of you probably
8 already know, is not like working for the Department of Motor
9 Vehicles. People get in the Department because they want to be
10 members of the Department of Fish and Game. Young kids grow up
11 wanting to be a forest ranger or wanting to be a game warden.
12 They like the outdoors.

13 What kills the Department is the bureaucracy. It saps
14 the enthusiasm, the exhilaration of working in the outdoors.

15 What Pete is doing and what I see happening over the
16 last four years of working with him is rebuilding the excitement
17 of wanting to work for the Department of Fish and Game; making
18 the civil servants there excited about their job; finding ways to
19 keep the bureaucracy from sapping the energy from these people,
20 but rather helping to channel that creative energy and the love
21 for the outdoors into ways that we can all be good stewards of
22 California's rich wildlife tradition.

23 With that, I'd just like to submit our testimony in
24 writing, and hope that you will confirm Mr. Bontadelli.

25 Thank you.

26 CHAIRMAN ROBERTI: Thank you very much.
27
28

1 MR. READ: Thank you very much, Mr. Chairman and
2 Members. Aaron Read here today, representing the California
3 Association of Professional Scientists. And these are a large
4 number of the employees who are professional scientists and
5 environmentalists working for the Department of Fish and Game.

6 We are in strong support. We have written a letter to
7 each of you indicating that.

8 We have here with us today one of our members, Mr. John
9 Grant, and I'd like to ask him to testify and mirror some of the
10 feelings of many of the professional employees who work within
11 the Department of Fish and Game.

12 MR. GRANT: Thank you. I'm John Grant. I'm a member of
13 the Board of Directors for CAPS. CAPS represents over 1700
14 scientists throughout State service, including several hundred
15 who work for the Department of Fish and Game.

16 I'm a marine biologist with the Department of Fish and
17 Game, and I have been for 17 years. I'm a professional
18 biologist, and I'm one of those chaps that that guy just
19 mentioned who wanted to be a Fish and Gamer for a long time.

20 Since Pete Bontadelli's been around, and he came in with
21 Jack Parnell, there have been some significant changes in the
22 direction of the area I'm involved, marine resource management.
23 My program, the one I'm involved in, is responsible for sport
24 fish habitat.

25 In the last couple of years, each year, we've seen about
26 a million dollars spent on sport fish habitat enhancement and
27 improvement and restoration. That has never been the case in the
28 17 years I have been with the Department before.

1 I think there will be a point in time in the future when
2 CAPS doesn't agree with Mr. Bontadelli, but everything he's done
3 so far, as far as we're concerned and the guys I've been talking
4 to are concerned, has been really good for the Department and the
5 resource. And I hope you guys do support his confirmation.

6 Thank you very much.

7 CHAIRMAN ROBERTI: Thank you very much.

8 MR. GHIO: Senator Roberti and Committee Members, I'll
9 just take a moment of your time. I'm Craig Ghio, President of
10 the California Seafood Institute, which is the trade association
11 for commercial fisheries in the State of California that's
12 charged with supplying fish to the 26 million fish-eating
13 consumers of the State of California.

14 We are here in support of the confirmation of Mr. Pete
15 Bontadelli as Director of the Department of Fish and Game. As
16 noted in the letter I sent to each Committee Member, the major
17 difficulties we've had with the Department in the last 20 years
18 have really not been due to poor biology, but with poor
19 administration.

20 With Pete as the Director, and Acting Director, and
21 administrative assistant, he has done a very able job in
22 administering the policies of the Department and improving the
23 policies of the Department.

24 We find that foremost that the Director be an able
25 administrator and also have the ability to handle the diverse
26 user groups and hire and listen to biologists' advice. The
27 seafood industry's dealings with Mr. Bontadelli shows that he has
28 these characteristics.

1 Though our industry has not always agreed with the
2 policies of Mr. Bontadelli, the California Seafood Institute
3 feels he'll be fair with the consumers of seafood in the State of
4 California, those that would like to recreate with our marine
5 resources, and he'll base his decision making on what is good for
6 our resources.

7 Thank you.

8 CHAIRMAN ROBERTI: Thank you very much.

9 MR. BROWN: Thank you Mr. Chairman and Members of the
10 Committee. I'm Corey Brown with the Planning and Conservation
11 League.

12 The National Audubon testified in favor of
13 Mr. Bontadelli's confirmation. We also want to add our support.

14 I believe Mr. Bontadelli has been very forthright in
15 terms of being -- having an open door with conservation groups
16 He's been very informed on the issues, and he's been very strong
17 on a number of important issues.

18 I know that many groups, including ours, have had
19 concerns over decisions like the mountain lion, but on balance we
20 have confidence in Mr. Bontadelli, the direction he'll be giving
21 the Department.

22 We urge confirmation. We believe that he's one of the
23 better Directors, one of the best Directors, we've seen in the
24 last several years, and we do urge your support.

25 CHAIRMAN ROBERTI: Thank you, Mr. Brown.

26 MS. DODGIN: My name is Marguerite Dodgin. I represent
27 Pacific Coast Federation of Fishermen's Associations and Golden
28 State Trollers.

1 I believe that both organization have submitted letters
2 in support of Mr. Bontadelli. We find that he is able to talk to
3 the fishermen, and he accepts suggestions from us. As you know,
4 he has several advisory groups that are interested in the
5 commercial salmon fishery. We feel that we can talk to him, and
6 that we urge your support of Mr. Bontadelli for confirmation as
7 Director of Fish and Game.

8 CHAIRMAN ROBERTI: Thank you very much.

9 Is there opposition in the audience?

10 MR. STEWART: My name's Ed Stewart, and I'm representing
11 Californians for Responsible Animal Management, which is
12 comprised of over 1500 individuals from many conservation and
13 humane organizations, including Amanda Blake, Miss Kitty from
14 Gunsmoke, who's our newest activist who's here today.

15 We don't enjoy opposing Mr. Bontadelli, especially since
16 I'm by myself, but the fact is, we've met with Mr. Bontadelli
17 several times during the past year; sometimes with Republican
18 Assemblyman, sometimes with Democrats. And to tell the truth, we
19 haven't ironed out any problems. We feel we've been placated by
20 Mr. Bontadelli before.

21 Today, we're delighted to see the concern on the captive
22 wildlife issue on behalf of the Senators here today in addressing
23 the captive wildlife permit and licensing program.

24 We still have a few questions, though, and I'd like to
25 straighten out just a few answers of Mr. Bontadelli in response
26 to Senator Roberti earlier.

1 As far as the facility in Sacramento County which has
2 maintained a captive wildlife permit for 15 years, this facility
3 has had seven inspections -- it just went up one this week -- six
4 of them by two wardens, while other compounds in this state have
5 been totally ignored since 1979. Had not moved to trigger the
6 inspection. This facility was in place for two years in the
7 County with no problems and a clean bill of health for two years.

8 The problem with the inspections and the Department of
9 Fish and Game seem to coincide with criticism of the Department
10 by the organization.

11 Also, Mr. Bontadelli had written a letter to Assemblyman
12 Sam Farr, stating that the inspections mandated by Assembly Bill
13 1620, by Sam Farr, would be given to through a memo of
14 understanding to the Peninsula Humane Society and also the
15 Ventura Humane Society to cover the State's inspections of wild
16 animal compounds.

17 Soon after that, after that information went to Sam
18 Farr, the Department in April put out a bid process, a new bid
19 process, and now the bids are coming in, and Mr. Bontadelli says
20 there're eight organizations that have made a big already on the
21 inspections. I just wonder if he has guaranteed Sam Farr, and
22 also Jack O'Connell in his office that the process was going to
23 go through the Ventura and the Peninsula Humane Society, how that
24 changed.

25 One other thing that I'd like to point out is, I read in
26 the paper that Mr. Bontadelli, one of his goals was to improve
27 the image of the Department of Fish and Game in the eyes of the
28

1 public in California. And I can guarantee him that the way that
2 you don't do that is to capture a bear in Cloverdale, drag it to
3 Placerville, and release it, and then have Fish and Game wardens
4 euthanizing it on the six o'clock news. That's not the way to
5 win the hearts of California.

6 We think that there has to be a set process and a
7 procedure that is in place at the Department to deal with these
8 animals that are captured in areas that are overrun now with
9 people that weren't before. It's an incredible problem.
10 Sometimes the animals are killed; sometimes the animals are set
11 to captivity for the rest of their lives.

12 We in the humane community would gladly offer assistance
13 to the Department of Fish and Game in coming up with a set
14 procedure to deal with these animals.

15 We appreciate your concern today with our captive animal
16 problem. We still have to oppose the appointment of Peter
17 Bontadelli.

18 The question about Captain Zobel and the conflict of
19 interest, yesterday or the day before has gone to the Auditor
20 General's Office, and now they're spending \$30,000 of taxpayers'
21 money to investigate the Department's captive wildlife program,
22 and also the conflict of interest with Captain Zobel. So, I'd
23 just like to end there, and we're awaiting the outcome of the
24 Auditor General's report.

25 Thank you.

26 CHAIRMAN ROBERTI: Thank you, Mr. Stewart.

27 Please come forward.
28

1 MR. GAITHER: Thank you, Mr. Chairman. I guess I'm here
2 representing the people that pay the bills, the sportsmen of
3 California. My name is John Gaither. I'm a County Supervisor
4 from Lassen County. I'm here representing the sportsmen of
5 Lassen County and the constituents that elected me to my office
6 based on my opposition to the policy of the Department of Fish
7 and Game.

8 I'm also here representing the three largest councils of
9 sportsmen in the State of California. That's the Southern
10 Council of Conservation Clubs, the Sportsmen Council of Central
11 California, and the Sportsmen Council of Northern California.

12 I am also here representing their designated
13 representee, Stan Radon, who was unable to make it today, and I
14 would like to read his letter that was delivered to each one of
15 you this last week.

16 SENATOR CRAVEN: I don't think there would be any need
17 to read it if we've received it.

18 MR. GAITHER: Okay. I will go over the concerns that
19 the sportsmen of California have, and that is that Mr. Bontadelli
20 does not bring any wildlife expertise to the Department of Fish
21 and Game. This is something that he readily recognizes; however,
22 I think you gentlemen should also recognize that California is
23 only one of six States in the United States that selects its
24 Department of Wildlife or Fish and Game Director based on
25 political expertise instead of wildlife expertise.

26 This lack of educational experience seriously handicaps
27 the Director of the Department. As a policy setter who is
28

1 elected by the people with no particular expertise, I have to
2 depend upon the expertise of my departments, which in many times
3 I find lacking, because I have found that in many cases, they
4 wish to direct the direction I want to go, not the direction of
5 the people that elect me.

6 So what we need in that Department is someone who has
7 some knowledge about fish and wildlife, who has some sensitivity
8 to the fish wildlife issues to which his Department is over.

9 The Department of Fish and Game is almost wholly
10 supported by fishermen and hunters. We should have a Director
11 who meets the qualifications to be put in the stewardship of our
12 wildlife. There is a public trust that is placed upon the
13 Department of Fish and Game to which the Director must carry out.

14 And I must say that the Department of Fish and Game has
15 violated the public trust on several occasions. Right now, the
16 Department of Fish and Game is asking for the law makers to give
17 them general fund monies because they have turned away the
18 sportsmen of California in such droves that their resources are
19 dwindling. As an example, the Department of Fish and Game's
20 policy has reduced the number of deer hunters in California by
21 400,000 in the last 12-15 years. This represents \$4 million in
22 just application fees.

23 Where are they going to get the money from now? They're
24 going to come to you, and they're going to say, "We want you to
25 support our ineffectiveness. We want you to support our
26 mismanagement. We want you to support programs which are not in
27 the best interest of the wildlife."
28

1 As an example, there's a program called Ranch for
2 Wildlife, which the sportsmen in California are fighting at all
3 ends of the State because it is an attempt to sell our wildlife
4 to the highest bidder. It's an attempt to privatize our wildlife
5 and to privatize our public lands.

6 Ironically, it's not something that was thought up with
7 the California Department of Wildlife; it came from the State of
8 Texas. And if any of you watch 20/20 and 60 Minutes, they show
9 the glamorous hunts that go on in Texas. They bring in exotic
10 animals, such as African lions, and they put them in a penned
11 area, and they hunt them.

12 This is the type of people that are trying to make their
13 way into California. In Lassen County, we've had two attempts by
14 Texas individuals to acquire public lands for this purpose
15 already.

16 Fish and Game says their primarily purpose is the
17 wildlife. And yet, their program promotes the selling of
18 wildlife to the highest bidder.

19 What hasn't really come out yet to any great extent is
20 the fact that this attempt is not just after hunting rights; it's
21 after wildland recreation. There's a proposal that was made at a
22 Society for Range Management seminar in Corpus Christi, Texas,
23 which would put 60 million acres of public in the 10 Western
24 States under private management. The agricultural extension
25 offices at the University of Davis are pursuing wildlife
26 management programs that are modifying Texas hunting programs for
27 California. They are pursuing the selling of our wildlife.
28

1 Mr. Bontadelli will carry on this practice. He will
2 carry on the other practices which have done great harm to the
3 wildlife of California because of their mismanagement.

4 Ironically, I've listened to some of the discussion
5 concerning the fishing industry, the salmon runs. It's kind of
6 ironic that the Salmon Enhancement Incorporated is planting fish
7 in the streams that the Department of Wildlife should be doing.
8 It's ironic that when the sportsmen of Lassen County offered to
9 raise quail, chukker, and pheasant in planting our wildlands,
10 that the Department of Fish and Game was against that program.

11 It's ironic that most of the people that were in this
12 room testifying for Pete Bontadelli do not pay for the operations
13 of that Department; the sportsmen do. And the sportsmen are
14 being shortchanged.

15 We oppose the confirmation of Mr. Bontadelli.

16 CHAIRMAN ROBERTI: Thank you very much.

17 Senator Ellis.

18 SENATOR ELLIS: Did I understand you to say that one of
19 their financial problems is that they're selling 400,000 fewer
20 deer licenses?

21 MR. GAITHER: That's one of their problems, is that
22 approximately 400,000 less deer tags today than they were ten or
23 fifteen years ago.

24 SENATOR ELLIS: How many do they sell total; do you
25 know?

26 MR. GAITHER: This year, 300,000.

27 SENATOR ELLIS: Three hundred thousand?
28

1 MR. GAITHER: Approximately.

2 SENATOR ELLIS: How many deer were shot?

3 MR. GAITHER: Approximately 30,000.

4 SENATOR ELLIS: So you had ten times more people out
5 there than there were deer, obviously, and you want to go to
6 700,000 to chase 30,000 deer?

7 MR. GAITHER: I think you will find out from the studies
8 that were done by the Department of Fish and Game that the number
9 of deer taken had nothing to do with the number of hunters that
10 are in the field. The number of deer taken are determined by the
11 number of available deer, assuming that we're taking adult male
12 deer.

13 SENATOR ELLIS: Yes, but if there I were a hunter and
14 wanted to go get a deer, I think I would rather have a lottery or
15 a drawing, pull it out of a hat or something, and give me a
16 better chance than the odds of what your odds would be then, 25-1
17 under your plan, or more.

18 Don't you think it would be fair to have fewer hunters,
19 and each of them have a better chance?

20 MR. GAITHER: Well, that might work out, Senator. The
21 Director of the Department of Fish and Game in 1978 came up to
22 Lassen County and basically said that, that the quota system was
23 going to save the Mule deer herds in California because we were
24 going to have less hunters taking less deer, et cetera.

25 The contrary's happened. The hunters are not the reason
26 for the decline of the deer herds. The deer herds have
27 diminished tremendously.

28

1 SENATOR ELLIS: What is the cause?

2 MR. GAITHER: Well, there are probably several causes.
3 Not being an expert in the field, I certainly couldn't comment on
4 all of them.

5 I can tell you this, that the policies of the Department
6 of Fish and Game have not enhanced that. An example was brought
7 up that the Department of Fish and Game is working with county
8 planning commissions to reduce development. The Lassen County
9 Board of Supervisors last year rezoned almost a third of our
10 County up in conservation, 88-acre minimum, to reduce
11 development. The Department of Fish and Game approved and
12 sanctioned the building of a resort on a private land management
13 program around the only waterhole for the wildlife in the area.
14 They had no comment on the development when I brought it to their
15 attention. And this gentleman that's building this resort has
16 little use for the wildlife, other than to make a buck off of
17 them.

18 Their policies have not enhanced. The reason for the
19 decline in the wildlife in many areas and in Lassen County is
20 predators. The predators are not hunters. Our biologist that
21 was up there, prior to the one we got now, ten years ago was
22 saying it's coyotes were taking large --

23 SENATOR ELLIS: Mountain lions?

24 MR. GAITHER: Believe it or not, Senator, we have more
25 mountain lions up there than you're aware of. It's ironic, it's
26 ironic, that my district is the only portion of Lassen County
27 that's included in the mountain lion hunt. And when I asked the
28

1 biologist how many mountain lions were in the area, he said, "I
2 have no idea." I said, "Do we have one, five, ten, fifteen, a
3 hundred?" He says, "I have no idea." Yet that was included in
4 the hunt.

5 SENATOR ELLIS: But by personal knowledge, you know
6 there are a lot of them up there?

7 MR. GAITHER: I have them within a quarter of a mile of
8 my house, sir. And they have been taking sheep; they have been
9 taking people's pets out of their backyards.

10 It's a serious issue.

11 SENATOR ELLIS: So while some people oppose
12 Mr. Bontadelli because of the mountain lion --

13 MR. GAITHER: It is kind of ironic.

14 SENATOR ELLIS: -- question, you're going the other way.

15 MR. GAITHER: Well, I think as I told, the irony of it
16 is, is that the mountain lion, I think, hunt is a very good
17 issue. The information that has come out of the Department of
18 Fish and Game is absolute garbage.

19 How do I, as a proponent, make a good decision on the
20 mountain hunt when I have a study in my possession from the
21 Forest Service which says there's ten times more mountain lions
22 in California than Fish and Game estimates? And you have people
23 on the other side that say there is a lot less.

24 I know of ten of them that live within rifle distance of
25 my house.

26 Now, if you look at it from the standpoint of a hunter,
27 those ten mountain lions take 50 deer a year. That's 500 deer
28

1 come out of the local area to those mountain lions alone. That
2 doesn't include the car kills; that doesn't include the dog
3 problems that we have. There's a lot of problems.

4 I think the Department of Fish and Game should give to
5 the policy makers good information to make policy decisions. The
6 information they gave to the court was so poor that most
7 sportsmen groups would agree with the judge that it does not
8 justify a hunt.

9 If you listen to the studies that were done by those
10 people that's out in the woods, I can take you out up there with
11 dogs, and we can tree mountain lions all day long. Fish and Game
12 says they're not there because it's not habitat.

13 The point is that Mr. Bontadelli is being appointed to
14 this job because he's a politician. He is a bureaucrat. And
15 everybody -- and I'm a politician, but I got elected. The point
16 is that within the Department of Fish and Game, the Director, the
17 Deputy Director, his assistant or the three deputies that are
18 appointed by the Governor, the Commission's appointed by the
19 Governor, everybody's appointed.

20 SENATOR ELLIS: Well, by definition, though --

21 MR. GAITHER: Not because of what they know --

22 SENATOR ELLIS: By definition, Mr. Bontadelli is not a
23 politician and never has been.

24 MR. GAITHER: Well, in order to make the deals he's made
25 to get this confirmation, he's a politician.

26 SENATOR CRAVEN: What deals?

27 MR. GAITHER: With the sportsmen groups.
28

1 SENATOR CRAVEN: I resent your comments.

2 MR. GAITHER: I'm sorry. I talked to the other
3 sportsmen groups, and that's what I was told; okay?

4 SENATOR CRAVEN: In other words, you just kind of exist
5 on hearsay?

6 MR. GAITHER: No, sir.

7 SENATOR CRAVEN: Do they pay the Supervisors in Lassen
8 County?

9 MR. GAITHER: Very poorly at times, yes, sir.

10 SENATOR CRAVEN: I can understand why.

11 (Laughter.)

12 MR. GAITHER: I'm sure you can, sir.

13 What I'm saying is, is that he went to sportsmen groups
14 to get their support.

15 SENATOR CRAVEN: There's nothing wrong with that.

16 MR. GAITHER: Nothing wrong with that. And the problem
17 with that is, is that he's had to make some arrangements with
18 these groups that are not in the best interest of the wildlife.
19 That's the main purpose of the position.

20 SENATOR CRAVEN: Well, you know, I'll tell you. I've
21 listened to a lot of those gentlemen and a few of the ladies who
22 came in to testify on his behalf. And I've seen them over a
23 period of years. And I'll be very frank with you, I have had a
24 tendency to disagree with them most of the time.

25 I have never seen them so unified on anything in fifteen
26 years.

27

28

1 Now, I don't know that that's because they are so
2 enamored of Mr. Bontadelli because of his political expertise,
3 because I don't think that had a thing to do with his present
4 position. But I think that they have confidence in him, and they
5 have seen him operate during the past approximately a year, not
6 necessarily as the Director for a year but almost, and feel that
7 he has done a very good job.

8 And I just don't understand why you have such a very
9 strong feeling of objection. Not that you're not entitled to it,
10 but I just don't understand it.

11 MR. GAITHER: It's nothing personal against
12 Mr. Bontadelli.

13 If you've got the packet, Senator, you'll see that the
14 State of Arizona recently hired a Director. He had a degree in
15 forestry in 1954, a Master's degree in wildlife management in
16 '56; a Ph.D. in zoology and a minor in ecology; 20 years in the
17 field.

18 SENATOR CRAVEN: I understand that some States use that
19 system. We don't nor have that.

20 MR. GAITHER: I understand that, sir. And that's why
21 our wildlife are in such terrible shape.

22 SENATOR CRAVEN: Did you come down and complain when
23 Jack Parnell was --

24 MR. GAITHER: Unfortunately, Senator, I was not involved
25 in this issue to this extent at that time.

26 SENATOR CRAVEN: Well, let me put it this way: when you
27 stood for office in Lassen County and said, "I'm the man to
28

1 support for Supervisor; I'm going to count the deer properly and
2 see that the right amount of mountain lions are taken or not
3 taken as the case may be, and I offer you the fact that I have a
4 degree in political science, and Master's degree in public
5 administration, and I'm very, very well qualified, and for that
6 reason you should vote for me," did you do that?

7 MR. GAITHER: No, sir. I went to the people --

8 SENATOR CRAVEN: What do you do? Are you a rancher?

9 MR. GAITHER: No, sir. Believe it or not, and you
10 probably won't, before this I was a mechanic for the Highway
11 Patrol for 16 years. I was very satisfied with my position.

12 What happened was, on an issue called Bass Hill -- and
13 Mr. Bontadelli's aware of it -- we had Fish and Game Deputy
14 Regional Director come to Lassen County and make a statement that
15 their Department was not responsible for public safety; that that
16 was a County issue because it was over an issue of public safety.

17 My office was called; job pressure was applied upon me.
18 I was accused of being an anti-gun person. I took very, very
19 sharp offense to that, and I begin to find out why. And I think
20 I've found out why.

21 SENATOR CRAVEN: The only point that I'm trying to make
22 is the fact that you're an individual, tried and true, and a man
23 of your word. You're sincere, honest, and so forth. And no one
24 ever really educated you in the governmental process. You did
25 that kind of by the seat of your pants.

26 And most Supervisors do. I am a former Supervisor and
27 never studied government a day in my life, and maybe my record
28

1 gives evidence of that fact. But I like to think that it was
2 pretty well done in a very major county.

3 What I'm trying to say to you is that Mr. Bontadelli has
4 had a background which has been basically administrative. And he
5 relies, as all of us do who are in this position, very heavily on
6 professional staff who have expertise in certain given fields.
7 And he tries to blend those things together, at the same time
8 factoring in what the people say and think.

9 And when I heard from the Sierra Club and all those
10 other people, I have to feel that based on their meetings with
11 him, and discussions, and suggestions, they felt that he was
12 doing it properly.

13 MR. GAITHER: I understand that, sir.

14 As again I pointed out, I believe that the people that
15 are paying the bill for that Department are the sportsmen of
16 California, not the Sierra Club --

17 SENATOR CRAVEN: That's correct.

18 MR. GAITHER: -- or the Friends of the Lion or the
19 conservation groups.

20 Ironically, they're getting the same garbage out of Fish
21 and Game as the rest of us are. And I think that down the road,
22 some of this will come out because the sportsmen of California,
23 the sportsmen of Northern California, specifically are becoming
24 organized, and we're going to get involved.

25 SENATOR CRAVEN: Really I think the irony of what you've
26 just said, and I'm using your word, is they have found the
27 "garbage" palatable.
28

1 MR. GAITHER: I beg your pardon? Who's that? Who's
2 found it palatable, sir?

3 SENATOR CRAVEN: Well, you said they're getting the same
4 kind of garbage, and I've said, well, in my judgement, all of
5 those clubs must find that a palatable dose because they have all
6 been very, very supportive.

7 MR. GAITHER: Obviously, if the environmentalists, sir,
8 had to pay the \$120 million to run that Department, they wouldn't
9 find it very palatable if the department was swayed towards
10 sportsmen.

11 The problem is that we have a Department that is
12 beginning to become, quote, more acceptable to the people that
13 are anti-hunting and anti-sportsminded than those that are.

14 SENATOR CRAVEN: Of course, you have to pay attention to
15 both sides on every issue. You know that as a Supervisor.

16 MR. GAITHER: That's true, sir. That's why I came here,
17 realizing that the voice that we're putting out is in the
18 minority at this point in time, but we are beginning to put
19 together our common interest. We are now statewide. We have
20 contact with the Southern Council groups and the Northern Council
21 groups. We are networking with other States.

22 I think what you're going to find out, sir, is what I
23 found out, is that the attempt is being made in California by
24 Fish and Game, is not being orchestrated by Fish and Game, there
25 is an attempt to take our public lands and privatize them. It's
26 coming from groups in Texas in the private hunting groups, and
27 I've got a proposal that says they want to take 60 million acres
28 of public land in the West and put it into private management.

1 SENATOR CRAVEN: Well, I think you can rest assure that
2 Mr. Bontadelli, of himself, is powerless to do anything along
3 that line. That would have to be a statutory thing, as you
4 probably recognize.

5 MR. GAITHER: I think if you was to read the law that
6 was passed establishing the private lands management program, you
7 will find that the Department basically writes most of the
8 regulations, which the Commission passes. The Department has
9 been very adapt [sic] at saying, "Well, it's a Commission
10 regulation." They're staff to the Commission. They basically
11 give them all the data.

12 What they're responding to is a well-orchestrated group
13 that has been pushing for about ten years on this. And
14 unfortunately, we're coming in at kind of a late date to put a
15 stop to it.

16 I'm sure that the Committee has known Mr. Bontadelli for
17 a long time. They don't know me from Adam, but I'll tell you
18 this, sir. I figure it's going to take five years to come to a
19 resolution on this issue in favor of the sportsmen, so I'm going
20 to be here for quite a while at these meetings.

21 SENATOR CRAVEN: Fine. I hope you're here a long time.

22 MR. GAITHER: Thank you.

23 CHAIRMAN ROBERTI: Thank you, Supervisor. We look
24 forward to seeing you on more occasions.

25 MR. GAITHER: We don't get equal time? I thought I had
26 another half hour to go.

27 Thank you.
28

1 MS. STONE: Ladies and gentlemen, my name is Dorothy
2 Stone, and I come before you as a private citizen.

3 I'm not here to go into anything lengthy, but I do have
4 some misgivings about the Department of Fish and Game.

5 I've been concerned with several issues in Sacramento
6 County recently and have been getting no great amount of response
7 from the regional office out at Nimbus. Because of this, I
8 attempted several times to contact Mr. Bontadelli, who was out of
9 his office, or for some other reason away. And I have never had
10 the pleasure of having him return my phone calls. That I have
11 some apprehension about.

12 SENATOR CRAVEN: Did anyone else return your call?

13 MS. STONE: No, no one from his office returned my call.

14 I understand that some of the issues that I was
15 concerned about were not on the scale of mountain lions, or the
16 pro-hunting or anti-hunting, or the Sierra Club. They are much
17 smaller scale. They're more like backyard neighborhood issues.

18 However, they are real issues, and it is very
19 distressing to me that they're being overlooked as a matter of
20 policy set by whoever is sitting in charge at a regional office.

21 SENATOR CRAVEN: Would they be actual Fish and Game
22 items as opposed to County Planning Department?

23 MS. STONE: Fish and Game, yes, sir.

24 SENATOR CRAVEN: I was wondering if you were complaining
25 about horses in somebody's backyard.

26 MS. STONE: No, no.
27
28

1 For instance, Fish and Game Code has what is called a
2 Stream Alteration Permit. They have a policy of granting to
3 certain entities, blindly, a Stream Alteration Permit without the
4 usual investigation that goes into granting such a permit. There
5 are memorandums of understanding between Fish and Game and
6 certain entities that skirt getting that Stream Alteration
7 Permit, and these certain entities are using that memorandum of
8 understanding to decimate complete stretches of natural streams
9 in Sacramento County. They are using heavy machinery, such as
10 Cats and Spiders, in these stream beds that has left behind
11 something that is just criminal.

12 I cannot get anyone out at the regional office
13 interested in looking into this. And that is one issue that I've
14 tried to contact Mr. Bontadelli on.

15 The other issue happens to be Depredation Permits.
16 Members of Sacramento County approach the region office of Fish
17 and Game and get a Depredation Permit over the counter. If any
18 other entity was to request a Depredation Permit, a warden would
19 have to make a determination that the Depredation Permit was
20 necessary. And also, they would suggest means that damage could
21 be controlled, other than destroying the animal.

22 However, this is also a policy that is not being
23 practiced fairly and equally among people that seek these
24 permits. And that is another misgiving that I have.

25 SENATOR CRAVEN: What was the animal involved in the
26 Depredation Permit?

27 MS. STONE: The animals involved are beavers.
28

One of the fellows at the region headquarters was quoted as to comparing beavers with ugly rats and snakes, and couldn't understand why anybody would have any concern with protecting them and trying to find alternatives to just shooting them.

SENATOR CRAVEN: I don't agree with him except in part; they are part of the rodent family.

MS. STONE: I don't agree with him, either. As far as I'm concerned, it's not their fault that they happen to be in the wrong place, if in fact they were.

SENATOR CRAVEN: You know, I can remember the issuance of Depredation Permits, and none have ever been issues that there wasn't a controversy. I don't care where you were or are.

But I never really recognized -- I was with the County at this time -- I never really recognized that we went to Fish and Game to get that permit. I thought -- Pete shakes his head, I guess we did. I thought we did it through the Department of Agriculture. In the case that I'm thinking about, it was birds; birds which had a tendency to overfly and alight on certain areas of golf courses and do certain things that birds, and all of us, do.

(Laughter.)

SENATOR CRAVEN: Well, why don't you talk to this lady, Pete, when you get a chance?

I think maybe there's a foul up in the machinery somewhere.

MS. STONE: Yes, I think so, too.

Thank you.

1 SENATOR CRAVEN: Thank you.

2 CHAIRMAN ROBERTI: Next witness.

3 Senator Ellis and I would both like to know, how many
4 other witnesses are there? This is the last witness.

5 MR. DeCHAMBEAU: I simply -- I'm Kent DeChambeau. I
6 represent the California Rifle and Pistol Association.

7 I simply wish to clarify the record in view of some of
8 the previous testimony.

9 I believe that you will find in your record a letter in
10 full and complete approval of Pete Bontadelli's appointment, and
11 requesting your confirmation of that appointment by both the
12 California Rifle and Pistol Association, which represents
13 39,000-plus members, and the National Rifle Association, which
14 represents some 270,000 representatives.

15 So, I do believe that you can rest assured that at least
16 the largest groups of sportsmen in this State, hunters, does
17 approve of this appointment.

18 SENATOR CRAVEN: Thank you, sir.

19 CHAIRMAN ROBERTI: Thank you.

20 Mr. Bontadelli, you may conclude and rebut.

21 MR. BONTADELLI: Thank you.

22 I believe in the interest of time, it might be useful
23 just to find out if there are any specific questions anyone has
24 that I can address.

25 CHAIRMAN ROBERTI: Thank you. I don't see any.

26 Do I hear a motion?

27 SENATOR CRAVEN: Move confirmation of Mr. Bontadelli.
28

1 CHAIRMAN ROBERTI: Senator Craven moves Mr. Bontadelli's
2 confirmation to the Floor.

3 Senator Petris.

4 SENATOR PETRIS: I had indicated earlier my support, but
5 I want to say, I know the Supervisor came forward, and I've met
6 with him, and I think it's good to have him and his people around
7 as a good watchdog. I think some of their concerns are very
8 praiseworthy and we should all pay attention.

9 I continued to be impressed with the broadness, variety,
10 and the scope of the support. I'm glad the NRA didn't push it
11 any more. They might have lost me on that one.

12 (Laughter.)

13 SENATOR PETRIS: Thank you, Mr. Chairman.

14 SENATOR CRAVEN: I think there's one interesting thing,
15 Senator Petris, that Director Bontadelli has that no one else in
16 State service has. He has his own army, navy, and air force.
17 And that's true. He has planes to overfly the area. He's got
18 ships at sea, and his personnel are all post-trained law
19 enforcement officers. That's quite a Department.

20 You should have joined the Marines. He's not old
21 enough. He fell between the cracks, I think.

22 CHAIRMAN ROBERTI: Secretary will call the roll.

23 SECRETARY WEBB: Senator Ellis.

24 SENATOR ELLIS: Aye.

25 SECRETARY WEBB: Senator Mello.

26 SENATOR MELLO: Aye.

27 SECRETARY WEBB: Senator Petris.
28

1 SENATOR PETRIS: Aye.

2 SECRETARY WEBB: Senator Craven.

3 SENATOR CRAVEN: Aye.

4 SECRETARY WEBB: Senator Roberti.

5 CHAIRMAN ROBERTI: Aye.

6 The vote is five to nothing; confirmation is recommended
7 to the Floor.

8 (Thereupon this portion of the hearing
9 before the Senate Rules Committee was
10 terminated at approximately 5:05 P.M.)

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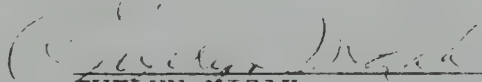
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That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

24th day of June, 1988.


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27 Evelyn Mizak
28 Shorthand Reporter

APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR JIM ELLIS

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR WILLIAM CRAVEN, Vice Chairman

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

MILDRED A. CARROLL, Superintendent
Deuel Vocational Institute

ELAINE W. DONALDSON, Member
Occupational Safety and Health Appeals Board

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: Governor's Appointees appearing today, Mildred A. Carroll, Superintendent, Deuel Vocational Institute. Please come forward.

We'll ask you what we ask all the Governor's Appointees, and that is why you feel you're qualified to assume this position?

MS. CARROLL: I began working for the Department of Corrections in 1966. Worked my way up through the ranks. Worked as a correctional sergeant, lieutenant, captain, correctional administrator. Was a Superintendent at the California Institution for Men for three years. Was Assistant Director for the statewide Parole Division for two and a half, and have been at DVI as the Superintendent since September of 1987.

And I've worked a variety of programs within Corrections: male felon, female felon, camp program, paroles, and institutions. I've spent 22 years working in the State correctional system.

CHAIRMAN ROBERTI: Are there any questions? Is there any opposition in the audience?

SENATOR ELLIS: Move the appointment.

CHAIRMAN ROBERTI: Senator Ellis moves the appointment.

I think you're going to get off easy. You come very well recommended.

MS. CARROLL: Thank you.

CHAIRMAN ROBERTI: Secretary will call the roll.

1 SECRETARY WEBB: Senator Ellis.

2 SENATOR ELLIS: Aye.

3 SECRETARY WEBB: Senator Mello.

4 SENATOR MELLO: Aye.

5 SECRETARY WEBB: Senator Petris. Senator Craven.

6 Senator Roberti.

7 CHAIRMAN ROBERTI: Aye.

8 MS. CARROLL: Thank you.

9 CHAIRMAN ROBERTI: The vote is three to nothing;
10 confirmation is recommended to the Floor.

11 The next Governor's Appointee is Elaine Donaldson,
12 Member of the Occupational Safety and Health Appeals Board.

13 Ms. Donaldson, we've seen you many times now. Why don't
14 we ask you why you feel you're qualified to retain this position,
15 and you might tell us a little bit about what the Board has done.

16 MS. DONALDSON: Chairman Roberti, Members of the Senate
17 Rules Committee, I do have a statement to make.

18 My name is Elaine Donaldson. I'm here today to ask for
19 your approval of my reappointment as Management Member of the
20 Cal-OSHA Appeals Board, effective January 25th of this year, and
21 ending in January of 1992.

22 When I appeared before you four years ago to ask for
23 your initial approval, I was delighted to have been appointed,
24 particularly since I came from the area of small business.

25 I was very enthused about the Cal-OSHA program and the
26 fact that as Chairman, I had a completely new Board. As a body,
27 we were dedicated not only to making the Appeals Board a more
28

1 efficient agency and one that was highly productive, but also one
2 that was always conscious of the fact that the program's main
3 dedication was to worker safety through fair and unbiased
4 decision making.

5 Despite the fact that we've had a new ballgame for the
6 past year and one-half, I still feel the same way. Our program,
7 of course, now only covers the public sector, so we have a much
8 reduced staff because of a reduction in our workload. However,
9 the principles remain the same, and the dedication of our Board
10 has remained constant.

11 We, like everyone else, are waiting for the final
12 outcome of the decision to return to the program as we knew it
13 before.

14 As I am certain you are aware, the Occupational Safety
15 and Health Appeals Board is responsible for the adjudication of
16 the appeals of employers and employees from the Division of
17 Cal-OSHA enforcement action. We have a two-level appeals
18 process, which I'm certain you are all familiar with.

19 Under the original program, from March of 1984 through
20 January of 1987, we instituted many procedural and staffing
21 changes that resulted in a smooth running operation, with
22 turnaround time for decisions the lowest in the history of the
23 Board. We inherited a huge backlog of petitions for
24 reconsideration, some of which dated back to 1977, and they were
25 very complex, and in many cases, precedential. However, by the
26 end of 1986, we had completed our backlog, and we were well
27 underway as far as keeping current.
28

1 Four years ago, I told you that for many years, I felt
2 that OSHA had projected a negative image in our State which was
3 unfortunate for the program, and I promised to work hard to
4 improve that image with a fresh approach to problem solving. I
5 believe I have done that.

6 And I told you from a personal standpoint that I believe
7 that our agency must be constantly aware of an obligation to
8 constantly to aid and improve the working safety of the work
9 force in the State of California. I believe I have motivated our
10 Board and our staff in that direction in a very positive way.

11 For those reasons, I would request your approval for my
12 reappointment, and I'll be happy to answer any questions you
13 might have.

14 CHAIRMAN ROBERTI: Thank you, Ms. Donaldson.

15 I've worked with you in connection with your work with
16 small business, and you've carried your expertise in the business
17 arena to the OSHA Appeals Board. I'll be happy to vote for you
18 once again.

19 Is there any opposition?

20 SENATOR ELLIS: Move the appointment.

21 CHAIRMAN ROBERTI: Senator Ellis moves the appointment.

22 Any opposition? Seeing none, the Secretary will call
23 the roll.

24 SECRETARY WEBB: Senator Ellis.

25 SENATOR ELLIS: Aye.

26 SECRETARY WEBB: Senator Mello.

27 SENATOR MELLO: Aye.
28

1 SECRETARY WEBB: Senator Petris.

2 SENATOR PETRIS: Aye.

3 SECRETARY WEBB: Senator Craven. Senator Roberti.

4 CHAIRMAN ROBERTI: Aye.

5 The vote is four to nothing.

6 MS. DONALDSON: Thank you very much, gentlemen.

7 CHAIRMAN ROBERTI: Thank you very much.

8 The vote is four to nothing; confirmation is recommended
9 to the Floor.

10 (Thereupon the Committee this portion
11 of the Senate Rules Committee hearing was
12 terminated at approximately 3:00 P.M.)

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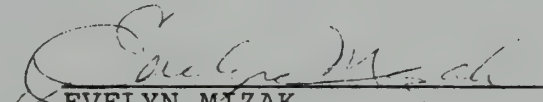
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30th day of June, 1988.


EVELYN MIZAK
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